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CURRENT TOPICS

Sunday Observance

LAST week the HOME SECRETARY announced the setting up of a Departmental Committee, under the chairmanship of LORD CRATHORNE, to tackle the prickly problem of the English (and Welsh) Sunday. The committee is to review the law (other than the Licensing Acts) relating to Sunday entertainments, sports, pastimes and trading in England and Wales and to make recommendations. We set out the names of the members of the committee at p. 628 of this issue. We wish them well in their deliberations and hope that some positive results will flow therefrom.

Notice of Intended Prosecution

SECTION 241 of the Road Traffic Act, 1960 (formerly s. 21 of the Road Traffic Act, 1930) requires that, in the case of certain driving offences, notice of intended prosecution should be given to the alleged offender within fourteen days of the commission of the offence. Such notice is not required if the person is warned at the time the offence was committed that prosecution would be considered or within fourteen days of the commission of the offence a summons for the offence is served on him, but where notice of intended prosecution is given, it may be "served on or sent by registered post to him." In *MacLeod* v. *Anderson* 1961 S.L.T. 297, an omnibus driver was charged with careless driving, the alleged offence having taken place on 6th August. On 16th August the prosecutor sent a notice of intended prosecution by registered post to the driver at his home, but the driver was away on holiday from 7th–21st August. After three unsuccessful attempts to deliver the notice, post office officials returned it to the prosecutor and the High Court of Justiciary held that the provisions of s. 21 of the Act of 1930 had not been complied with and, for this reason, that the Sheriff-Substitute had been right in refusing to convict. In reaching this decision, the court followed the decision of the Divisional Court in *Beer* v. *Davies* [1958] 2 Q.B. 187, where, in similar circumstances, their lordships held that there was not a sufficient giving of notice merely by sending the notice by registered post to the defendant at his address: in neither case had the accused by his own conduct contributed to the failure to effect service. However, if a notice is sent by registered post to a defendant and delivery of it is accepted by someone authorised to accept delivery of letters on his behalf, the section is complied with even if the letter does not reach the defendant's hands until after the expiration of the statutory period: *Layton* v. *Shires* [1960] 2 Q.B. 294.

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Divorce of Persons Married in Eire

MR. JUSTICE KARMINSKI gave a most important judgment on the effect in Eire of a decree of divorce granted by the High Court in England, the husband being at the time of the first marriage and of the divorce domiciled in England (*Breen (otherwise Smith)* v. *Breen*, p. 589, *ante*). A suit was brought by the wife, who married the divorced husband in a register office at Dublin, asking for annulment of the marriage, on the ground of the husband's bigamy, because the first wife was still alive, and the English decree was not valid in Eire according to the Constitution of Ireland, 1937. The court held that the law of Eire, in accordance with the established principle of private international law, would recognise the validity of a decree of the dissolution of the first marriage by the court of the husband's domicile, and would also recognise the validity of the second marriage celebrated in Eire. The relevant article of the Constitution of Ireland statute provided: "no person whose marriage has been dissolved under the Civil Law of any other State, but is a subsisting valid marriage under the law in force within the jurisdiction of the government established by this Constitution, shall be capable of contracting a valid marriage within that jurisdiction during the life of the other party to the marriage so dissolved." In a case which came before the Irish courts in 1958, *Mayo-Perrott* v. *Mayo-Perrott* [1958] Ir. R. 336, the plaintiff, who had obtained a decree of an English court for dissolution of her marriage, sued in the High Court of Ireland for the balance of costs awarded to her. It was held in the court of first instance, and affirmed on appeal by the Supreme Court, that the order for costs could not be enforced in Eire, being repugnant to public policy on divorce. The Chief Justice said that the section of the Constitution laid down as plainly as possible that a marriage dissolved under the law of another State remained in Eire a subsisting valid marriage. Another justice of the Supreme Court held to the contrary, that the law of the Constitution had not *expressly* provided that a decree of the court of the domicile of the parties was ineffective to dissolve the pre-existing marriage. It is a moot point; and the English court naturally strives for an interpretation of the Irish constitutional law which does not contradict a fundamental principle not only of the law of the Commonwealth, but of the law of nations.

Increased Litigation in 1960

A GENERAL increase in litigation last year is recorded in "Civil Judicial Statistics" (Cmnd. 1416, H.M.S.O., 4s.). The number of appeals to the House of Lords during the year was forty-eight as compared with forty-one in the year 1959. There were 749 appeals set down in the Court of Appeal, an increase of fifty-two as compared with the previous year. Of this number, 222 were appeals from county courts. The total of appeals and special cases entered or filed in the High Court from inferior courts was 377, an increase of eight. The total proceedings in the three divisions of the High Court increased by 17 per cent. as compared with the preceding year, from 129,186 to 150,984. Proceedings in the Chancery Division increased by 1,139 to 10,839; in the Queen's Bench Division there was an increase of 18,481 to 110,980 and in Probate, Divorce and Admiralty an increase of 2,178 to 29,165. The number of matrimonial petitions filed during the year 1960 was 28,790, an increase of 2,229 as compared with the preceding year. The number of petitions filed during the year for dissolution of marriage included 9,074 petitions for desertion, 5,622 petitions for cruelty, 162 petitions for lunacy and eighty-nine petitions for presumed decease. Application for leave to present a petition for divorce within three years of the date of marriage was made in 204 cases and in 155 cases the petition was allowed. The number of decrees nisi for dissolution of marriage was 23,989: 10,628 decrees for husbands and 13,361 decrees for wives. The number of proceedings commenced in county courts showed an increase of 13 per cent. from 1,325,798 to 1,492,958. Of the actions disposed of, 71 per cent. (1,022,963) were determined by consent or on admission or in default of appearance or defence and 2 per cent. (31,713) were determined on hearing. The remaining 27 per cent. (380,150) were struck out, withdrawn, paid or otherwise disposed of before hearing. Of the 31,713 actions determined on hearing, 19,103 were determined before a judge, 12,586 before a registrar, and twenty-four before an arbitrator appointed by the judge under s. 92 of the County Courts Act, 1959.

Factories Act, 1961

THERE can be no doubt that there was need for a statute to consolidate legislation relating to factories, and the Factories Act, 1961, was enacted "to consolidate the Factories Acts, 1937 to 1959, and certain other enactments relating to the safety, health and welfare of employed persons." In addition to the Factories Acts, 1937 to 1959, the Act of 1961, which comes into force on 1st April, 1962, repeals the Lead Paint (Protection against Poisoning) Act, 1926, the Employment of Women and Young Persons Act, 1936, and s. 7 of the Slaughterhouses Act, 1958. The aim of the 1961 Act was said to be "purely consolidation" but if, after closer examination, an article reviewing the new Act seems to be called for, we will publish one before it comes into force.

Silencing Portable Radios

IN a letter published in *The Guardian*, 5th July, Mr. ANTHONY A. DUNN asked whether action cannot be taken to ban the use of portable radios out of doors. On the same day we noticed a report of a case at Hastings which resulted in a youth, who had walked along a street at St. Leonards at 10.15 p.m. playing a portable radio, being fined £3. It seems that these proceedings were brought under the Noise Abatement Act, 1960, s. 2 (1) (*a*) of which provides that, subject to certain exceptions, a loudspeaker in a street shall not be operated between the hours of nine in the evening and eight in the following morning, for any purpose. In this connection "street" means a highway and any other road, footway, square or court which is for the time being open to the public (ibid., s. 2 (1)) and a "loudspeaker" includes a megaphone and any other device for amplifying sound (ibid., s. 2 (5)). In *Reynolds* v. *John* [1956] 1 Q.B. 650, ASHWORTH, J., defined a loudspeaker as "an apparatus which is electrically driven for the purpose of reproducing sound over a wide area" and LORD GODDARD, C.J., thought that it would possibly include a foghorn such as is used on a ship. Whether or not this is the case, the Hastings magistrates appear to have been satisfied that the term includes a portable radio and to some extent, at least, the Act of 1960 appears to provide an answer to Mr. Dunn's question. Of course, local byelaws may give further protection.

REPORT ON THE TRUCK ACTS

THE committee, under the chairmanship of Mr. David Karmel, Q.C., appointed by the Minister of Labour in July, 1959, "to consider in the light of present-day conditions the operation of the Truck Acts, 1831 to 1940, and related legislation," reported last week.

The need for revision has long been apparent. The Acts are notoriously difficult to interpret, though perhaps not all the blame should be laid at the draftsman's door. Much confusion was caused by the initial failure of the courts, in construing the obscure provisions of the 1831 Act, to appreciate that it was designed to prevent not only payments in kind, but also deductions from wages except in so far as they were expressly authorised. Before 1896 it was held that the imposition of fines and deductions was lawful. The Act of 1896 is based upon that assumption, which was destroyed ten years later by the decision in *Williams* v. *North Navigation Collieries* (1889), *Ltd.* [1906] A.C. 136. The problems which have resulted cannot be resolved upon any logical basis (see *Roddy* v. *Corporation of Londonderry* [1940] N.I. 172).

The wording of the Acts is ill adapted to achieve its social purpose, and has given rise to legalistic distinctions which have no social or industrial significance. Thus an employer may not be able to impose a fine for misconduct, but he can reserve a contractual right to suspend without pay—a course which may be more disadvantageous to the workman whilst in no way benefiting the employer. Alternatively, he can introduce a bonus which is disallowed for arriving late or for other disciplinary reasons. In the cotton weaving trade, it is unlawful to make deductions for bad work from wages already ascertained, but lawful to take bad work into account in ascertaining the piecework rate to be paid. Outside that trade, both practices appear to be covered by s. 2 of the 1896 Act.

These illustrations are by no means exhaustive of the anomalies which can arise under the existing law. A situation in which the legality of benefits in kind, assurance, savings, profit-sharing and other schemes for the mutual benefit of employers and employees may depend upon the stroke of a pen hardly engenders respect for the law.

Case for the abolition of the Acts

It was agreed that the Acts serve no useful purpose under the present social and industrial regimes. The conditions which nurtured truck practices have disappeared, and the need for legislative protection is an echo of the days before the growth of Trade Unionism and collective bargaining. The Acts deter employers from providing benefits over and above cash wages, and operate unfairly against them since the employee may enjoy the benefit of a mutually advantageous, but illegal, arrangement for years and then sue for the full value of benefits received on the ground that they were part of his remuneration. There is no evidence that the lack of protection operated to the detriment of those persons outside the "tutelary shelter" of the Acts, though they may be less well organised and have less bargaining power than those within it.

The committee concluded that it would be premature to jettison all statutory safeguards. Although truck practices have declined, 123 complaints to the Minister were substantiated between 1947 and 1958. Further, although the great majority of employed persons are protected by collective bargains, the operation of which can be extended under s. 8 of the Terms and Conditions of Employment Act, 1959, or by statutory wage-fixing machinery, there is a considerable number still unprotected. The committee therefore recommended the replacement of the Truck Acts by legislation more in keeping with modern conditions, wider in scope, yet less restrictive.

Scope of the proposed legislation

The existing legislation applies, generally speaking, to workmen under s. 10 of the Employers and Workmen Act, 1875. This embraces persons engaged in manual labour under a contract with an employer, whether it is a contract of service or personally to execute any work or labour, but excludes domestic or menial servants.

Under s. 10 of the 1887 Act the protecton is extended to a person who makes articles in his own home under £5 in value and sells them to another person who buys them in the way of trade. The purchaser is deemed to be an employer, and the price to be wages.

The provisions of the 1896 Act relating to fines and deductions also apply to shop assistants.

The 1875 definition has proved most unsatisfactory. The exclusion of domestic and menial servants may mean, e.g., that a boilerman employed in a hospital or hotel is outside the Act, but a person employed in the same capacity in a factory is within it. The test of employment "in manual labour" is whether manual labour is the real and substantial employment, or merely incidental thereto. Thus a tram driver is not a workman, but a bus driver who has to carry out running repairs is. It is unnecessary to multiply examples, but there is clearly a wide area of uncertainty and persons excluded may be just as much in need of protection as those included.

The committee suggests that the scope of future legislation should cover *all persons employed under a contract of service*, including Crown servants, but excluding merchant seamen who are dealt with under special statutes. Unfortunately, whilst this would widen the scope in one direction, it would narrow it in another, for the present definition includes persons not employed under a contract of service. The solution would be to apply to such legislation the comprehensive definition of "worker" contained in the Industrial Courts Act, 1919.

The committee reserved the question of payment by cheque or bank transfer, recommending that the controls contained in the Payment of Wages Act, 1960, were unnecessary in respect of non-manual workers.

Local tribunals

To provide a simple and quick method of dealing with grievances, the committee proposes the creation of local tribunals composed of an independent chairman and representatives of workers and employers. Their awards would be legally binding, enforceable by civil action, and subject to an appeal on a point of law to the Court of Appeal or Court of Session. Complaints would be channelled through the local offices of the Ministry of Labour.

As a corollary the penal sanctions would be removed, with the consequential result that inspectors of factories and mines would be relieved of the duty of enforcing the Truck Acts.

Payment in kind and freedom to dispose of wages

Turning first to payment in kind, the committee found no evidence of any survival of the evils at which provisions on this matter were aimed. Only two out of the 123 complaints to the Minister dealt with payment in kind.

Protection against restrictions on freedom to dispose of wages is supplementary. Originally directed against "Tommy-shops," the 1831 Act has been applied to agreements not to shop at the co-op., and agreements concerned with the retention of wages to cover damages for occupation of company houses after the termination of tenancies.

In the absence of evidence of actual or prospective abuse, the committee proposes that benefits in kind be legalised. This would be done by defining "wages" as cash wages payable under the contract of service, such wages to be paid in cash or in accordance with the Payment of Wages Act, 1960. The present definition includes anything the worker is to receive as a reward for his services.

The committee accepts as its basic tenet that there is no objection in principle to the payment of wages in kind in present conditions. Trade unions may well argue that the basic principle enshrined in the Truck Acts, that a worker should be paid in full in cash and without strings, still holds good. Obligations under I.L.O. Convention No. 95 of 1949 should be borne in mind in this connection. They may insist on the retention of the prohibition against payments in kind, in order to shut the door against the *possibility* of abuse, but subject to modifications which will permit beneficial practices to operate subject to reasonable control. An appeal to the local tribunal might suffice.

Deductions from wages

The committee received evidence that many deductions which appear desirable both to employers and workers cannot be made even on a consensual basis. They instanced the recovery of loans by an employer to a worker, the recovery of advances and overpayments of wages, payment for transport to and from work, payment for protective clothing or tools, contributions towards the cost of recreational facilities. Whilst there is some uncertainty as to the scope of the limited exceptions permitted by the 1831 and 1896 Acts, it might be pointed out that some of these instances are within them. The provision of transport, for example, falls within s. 3 (1) (*c*) of the 1896 Act (*Roddy* v. *Corporation of Londonderry*, *supra*). Certainly the provisions are out of date and in need of revision.

The committee started from the proposition that deductions to which the worker has consented are not, generally speaking, objectionable at all, and should be permitted subject to suitable safeguards. The only safeguard it suggests, however, is an appeal to the local tribunal on the ground that the deduction is not provided for in the contract of employment or otherwise agreed to. Although recognising that there might be cases in which the worker felt that he had no choice but to accept unreasonable deductions owing to the difficulty of obtaining employment, it does not contemplate an appeal on the ground that the deductions are unreasonable or the consent unreal. If there are cases deserving legislative protection, this provision hardly seems an adequate safeguard against economic pressure. The committee bases its views on general principles of contractual freedom. But do the individual employer and worker have any real freedom when contracting on the basis of a collective agreement, when trade union protection renders legislative intervention unnecessary?

The committee's proposals would not affect the deductions prohibited by any other statute, e.g., s. 120 of the Factories Act, 1937.

Fines and deductions for bad work

These topics are dealt with in the same way because there is no difference in principle between them. The committee considered but rejected a suggestion that fines—a frequent cause of friction—should be made illegal, upon the ground that they are often regarded by workers as well as employers as a more satisfactory course than dismissal.

Fines and deductions should be allowed only where (*a*) there is an accepted practice; or (*b*) the majority of workers concerned have agreed to the principle of fining. The amount of the penalty should be fair and reasonable—the criterion contained in ss. 1 and 2 of the 1896 Act. To secure the worker against abuse, the employer should inform him that he intends to impose a fine and of the amount, and not make any deduction for a further ten days unless the worker agrees. During this time the worker could appeal to the local tribunal, which should have power to disallow a deduction or reduce an unreasonable deduction. It is suggested that further safeguards might be necessary, e.g., that the employer inform the workman of his right to appeal. The committee does not expressly deal with the problems arising from practices at present outside the letter but within the spirit of the Truck Acts, viz., suspension without pay, etc., mentioned above. These should be taken into account in framing legislation based on the committee's report.

The committee singled out two problems for special treatment.

Overpayments

It is proposed that an employer be empowered to recover overpayments by deductions, provided (i) the worker agrees (*a*) that he has been overpaid, and (*b*) as to the amount, and (ii) the deduction does not exceed 10 per cent. of wages in any one pay period. Any dispute would be referred to the tribunal.

Cash shortages

The report recommends that employers should be entitled to recover by deductions provided (i) it is permissible under the contract of service, and (ii) the worker is informed of the shortage and amount to be deducted.

Although his consent should not be necessary in this case, the worker should have a right of appeal to the tribunal, which should have power to disallow the deduction, reduce the amount or reduce unreasonably high instalments.

Related legislation

The report recommends the repeal of the Hosiery Manufacturing (Wages) Act, 1874, which is regarded in the trade as being of purely historical interest, of the separate provisions of the Stannaries Act, 1887, s. 11, and of the Shop Clubs Act, 1902, which has failed to achieve its object and is generally ignored; and the incorporation into the new legislation of the substance of the Payment of Wages in Public-houses Prohibition Act, 1883. Certain consequential amendments may be necessary in the Wages Councils Act, 1959.

Although the report is unsatisfactory in a number of respects, it at least provides a basis for discussion. It is to be hoped that it does not go the way of its predecessors.

M. A. H.

ASPECTS OF CHANCERY PRACTICE AND PROCEDURE—III

MORTGAGE POSSESSION AND PAYMENT CASES—I

APPLICATIONS by mortgagees for payment of moneys due under the mortgage or legal charge or for possession to enable them to give vacant possession on a sale are common. In most cases the position is unambiguous: the mortgagor has clearly defaulted by not paying the interest or instalments of principal and interest as they became due. Whatever the reason for the litigation, the proceedings can be started by writ of summons, and where there are disputes of fact upon which oral evidence is likely to be necessary, it may be essential to initiate the proceedings in that way. But in by far the majority of cases the institution of proceedings by originating summons as contemplated by R.S.C., Ord. 55, r. 5A, is preferable; it is cheaper and simpler.

Comprehensive Practice Directions

Comprehensive Practice Directions have been issued by the judges of the Chancery Division in respect of applications of this nature, which should be carefully observed. Although these directions are expressly stated to refer to proceedings instituted by originating summons, they are normally substantially applied if the proceedings are started by writ instead of originating summons. There is an important deterrent to proceeding by writ when originating summons procedure is appropriate. The main Practice Direction concludes: "In any case where the plaintiff proceeds by writ where he could have proceeded by originating summons, no more costs are to be allowed than would have been allowed if the proceedings had been commenced by originating summons." In this connection it should be remembered that the fee on issuing a writ (*a*) where the claim is solely for a liquidated sum not exceeding £100 is £3, and (*b*) in any other case is £4, whereas the fee for issuing an originating summons is £2. The writ fee does not, under the present practice, absolve the plaintiff from paying Fee 21 (10s.) on his order.

Where the mortgagee gets an order for the recovery of money (whether alone or coupled with an order for possession), the master normally awards costs in accordance with a fixed scale. He will not step up the costs where a writ has been used instead of an originating summons. Where there is an order for possession only, the normal practice is to leave the plaintiff to add the costs to his security. But that, of course, means that he can add his proper costs. If he has incurred costs unnecessarily and tries to add them to the security, the mortgagor would be entitled to complain and could have the bill taxed under the Solicitors Act, 1957, or referred to The Law Society for scrutiny, or refer it to The Law Society and later have it taxed.

In many cases only one affidavit is required in support of the claim, that of the plaintiff or someone who can depose as to the facts. In every case the affidavit should show that the plaintiff is entitled to the relief which he seeks. As the main Praction Direction states: "There is no right to an order merely because the defendant fails to appear." If, therefore, possession is sought, it must be shown that the plaintiff's right to possession operates. If, by the terms of the mortgage, the mortgagor has attorned tenant, it should be made quite clear that the tenancy has determined. If a notice has to be served in order to determine the tenancy, the affidavit should show that notice was duly given; if the mortgagee is entitled to possession if there has been a default on the part of the mortgagor for a certain period, it must be shown that there has been such a default; and so on.

Mortgagor in possession

If the mortgagor is in possession (and possession only is sought), he is the only necessary defendant. (But if there is a surety or second mortgagee, the redemption clause in the order will have to be appropriately modified.) If there are third parties who claim that they have a right to stay in possession as against the mortgagee, the normal practice is to add them as defendants. If there is doubt as to whether there will be such a claim, that matter should be brought to the master's attention. It is usual to give notice to such persons (if they are not already joined as defendants) to give them an opportunity of applying to be joined as defendants. This is an important matter, since, if only the mortgagor is joined as a party and there are other persons with rights which are effective against the mortgagee, these persons will be able to have the order for possession set aside or modified when steps are taken to enforce it. Costs may thus be incurred which the mortgagee will be unable to get from the mortgagor, and he may, moreover, be liable in damages for interference with the rights of these non-parties.

In the majority of cases no difficulty will be experienced if the Practice Directions (which are set out in the current (and 1960) Annual Practice immediately after Ord. 55, r. 5A) are carefully observed. It is surprising, however, how often there is non-compliance with one or more of these practice requirements. Now that the post can be used on the settling and passing of Chancery orders, it is more than ever desirable to see that everything has been duly dealt with so as to avoid delays in perfecting an order. It is proposed to enumerate the main requirements (with some amplification and comment) for easy reference. Before doing that, it may be as well to draw attention to Ord. 64, r. 13, which runs: "In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed." No doubt the main object of this rule is to give the other side a chance to pick up the threads of the case where it has lain dormant for a year or more. In the majority of mortgage cases it is simple enough to ascertain the position even after a long delay. If a mortgagee has held his hand out of kindness and consideration for the mortgagor, the operation of this rule may seem to be unduly favourable towards the mortgagor. But so long as the rule remains unchanged, it should be observed (subject to the slight modification of practice introduced by the Practice Direction of 1958 which we note later).

Writ or originating summons?

The first question to be decided is whether to proceed by writ or originating summons. In most cases the latter should be chosen. The form of originating summons that is applicable is the *inter partes* form.

The writ or originating summons must be served. Sometimes mortgagors are elusive, and an order for substituted service will be necessary. An order for substituted service is obtained on an ex parte application, without summons, supported by an affidavit showing why the order is necessary

and indicating why the proposed method of service is likely to bring the proceedings to the knowledge of the defendant. In the Annual Practice there are set out, in the notes to Ord. 10, guiding rules for obtaining such an order in the normal sort of case where the defendant is evading service. It should be observed that normally two calls should be made at the address where the defendant may be found, the second call being made by appointment by letter sent to him by ordinary prepaid letter post giving at least two clear days' notice of the intended call.

The defendant may or may not enter appearance, but whether he does or not the Practice Directions require that:

(i) The affidavit in support must exhibit a true copy of the mortgage or charge except in the case of registered land. The original deed or the land charge certificate must be produced at the hearing. Sometimes, no doubt through ignorance of this direction or oversight, the original deed is exhibited, but from a conveyancing point of view it is preferable not to have exhibit marks on an original title deed.

(ii) If the application is for payment only, the affidavit must prove that the money is due and payable and show how the amount is arrived at. Moreover, if interest to the date of judgment is asked for, the amount of a day's interest must be shown. Unless all the required information is given, a further affidavit will be necessary, and it is unlikely that the master, in fixing the figure for costs, will allow costs that have been unnecessarily incurred.

(iii) Where possession is sought, the affidavit in support must show the circumstances under which the right to possession arises. This will depend on the terms of the mortgage. If there is a tenancy between the mortgagor and the mortgagee other than a tenancy at will (which would be terminated by the institution of proceedings), the affidavit must satisfactorily show that the tenancy has determined and the mortgagee is entitled to possession. The affidavit must also show the state of the account between the parties, setting out the amount of the advance, the amount of the repayments, the amount of any interest or instalments in arrear and the amount remaining due under the mortgage or charge.

Appointment to hear originating summons

An appointment to hear the originating summons must be taken out—under Ord. 54, r. 4D. For this purpose the original summons must be produced at the master's chambers. (The relevant Practice Direction as set out in the current and recent Annual Practices is slightly defective and therefore not quite clear.) A copy of the originating summons must be left at chambers, too, for the master's file.

If the defendant has entered appearance, there must also be left at chambers the duplicate memorandum of appearance, the exhibits and the original affidavit. In respect of the last item, it should be noted that it is the original that is left. No office copy is normally required in these cases. If an office copy is obtained, the cost is likely to be disallowed. The affidavit has to be filed so that it can be read in the order. It is filed usually after the order has been made. Authority is obtained in the registrar's chambers for it to be filed as of the date of the order. The notice of appointment together with a copy of the affidavit in support (but not of the exhibits) has to be served on the defendant or his solicitors four clear days before the hearing. Service in this connection means service in accordance with Ord. 67, r. 2—that is to say, the documents must either be left within the prescribed hours at the address for service with any person resident at or belonging to such place, or be sent by post in a prepaid registered envelope addressed to the person to be served at the address for service. It should be specially noted that if the defendant or his solicitors do not attend the hearing and an affidavit of service is required, the affidavit must prove service of the notice *and* of a copy of the affidavit in support. This is a common omission and holds up the order until the affidavit has been corrected and resworn.

If the defendant does not enter appearance, there must be left at chambers (in addition to the copy originating summons) a certificate of non-appearance (which is obtainable in the Central Office on the filing of an affidavit of service), the original affidavit (what was said above applies here, too; but it is also necessary to see what is said about indorsing the affidavit in the next article) and the exhibits.

(To be continued) H.

County Court Letter

THE DISTAFF SIDE

THOSE with anything more than the most casual acquaintance with the county court will have noticed the frequency with which certain names appear as defendants to summonses. From this it might be assumed that there is such a thing as a county court type. Fortunately, one of the things that makes court work so interesting is the fact that this is not the case. Litigants come in all shapes and sizes, in all colours and sexes, and in all degrees of creditability. No two are alike; every one is an individual to be evaluated to the best of the court's ability on his own individual merits.

About the nearest that can be got to classifying litigants is to put them into very broad classes. There are those, for instance, who clearly have a full belief in the justice of their case, however mistaken, and who are often very hard, if not impossible, to convince that they are wrong. There are the Would-pay-if-I-could-but-I-can't class, the stalwarts of the instalment order. There are the pathological liars, an apparently enormous class. How lucky it is that the papers do not have to be sent to the Director of Public Prosecutions in all cases of suspected perjury. The poor man could never cope. And there are the wrigglers; the people who know very well that they are in the wrong but will seize every straw of fact or law, real or imaginary, in order to try to dodge their obligations. Paid-up credit sale cards, paid cheques, receipts and all sorts of dubious documents, sometimes suspiciously altered but always relating to some completely different transaction, are produced like rabbits out of a hat. Red herrings of all sizes and degrees of odorousness are drawn across the court, and every conceivable irrelevant issue is fully aired till all grow weary. Did they but know it, the wriggler class is sufficiently numerous for its method of operation to be very well known, and lucky indeed is the member who gets away with it.

The ladies (God bless 'em)

Though it may sound ungallant to say so, quite a high proportion of feminine defendants come into this class. Their flair for being highly offended at receiving a summons at all,

combined with a positive genius for refusing to see any material point in their disfavour and a habit of introducing irrelevancies, mark them out as potential wrigglers from the start. Add to this the fact that the average female moral sense does not boggle for a second at such minor dishonesties as smuggling, accepting wrong change, black marketing and so on (provided of course that the offender is not found out), and the picture is complete. The temptation to try to get away with it is overwhelming, particularly if the lady in question has a bit of feminine charm and absolutely the latest thing from Paris in the shape of hats, which she no doubt regards as having far more persuasive power than legal argument.

Many judges and registrars have a secret dread of the case in which an attractive young lady appears as a party. It is not so much that they fear that justice may not be done—they are professionally impervious to even the most seductive feminine charms—but they feel that if they find for the lady it may not manifestly be seen to be done, particularly if the other party is also feminine, but less favoured by nature or skilled in lilygilding.

The Portias (they call 'em)

The situation is not the same when a lady advocate appears. A judge was once heard to observe that no case was so good that it could not be improved by a lady barrister. Besides, it helped him to keep awake. Not even the unfeminine accessories of wig, Peter Pan collar, or what is believed to be technically known as "wing-collar and screen"—shades of the yashmak—can entirely negative a pretty face, but the lady solicitor certainly scores in being able to appear without the wig.

There used to be a lady solicitor practising in a provincial town whose head of hair was such that it would have been quite impossible for her to wear a wig. Truth to tell, she was rather a better looker than lawyer, and she became well known by one and all for her habit of turning appearances before the registrar in chambers into social calls. Arriving very late for an appointment, she would sit down, without invitation or apology, smile sweetly and make some such remark as "Isn't it hot?" On one occasion she came in to tax a long and somewhat extraordinary bill. After her opponent, a managing clerk of the bristling type, had successfully challenged several of the first items on the bill, she looked at him with a hurt expression. "I hope we are not going to be too long over this," she said reproachfully. "I've got to get to the hairdresser."

The bankrupts (Heaven help 'em)

In comparison with the opposite sex there are relatively few lady bankrupts. Of those that there are, not a few are found to be acting as screens for the commercial activities of husbands who are already bankrupt. This introduces a slightly criminal flavour into the proceedings, and indeed it is noteworthy that nearly all cases of lady bankrupts seem to include some feature of an unusual nature.

Several recent examples of this come to mind. There was, and still is, the lady whose statement of affairs shows her assets as worth several million pounds, due entirely to her opinion of the true value of a patent. Unfortunately the Official Receiver cannot share her optimism. Then there was the well-known stage personality who fell foul of the income tax people, a fate that frequently befalls people in show business. In spite of the slightly sensational nature of her act, she proved to be a most unassuming and almost homely person who was employed as a cook, a function that she performed extremely efficiently.

Passing over the also somewhat homely lady whose public examination was put first in the list so that it could be started before the pubs opened, and whose sole source of income was, she claimed, presents from gentlemen friends, the case of the raven-haired beauty will serve to round off this letter. Having skipped her public examination, she was brought before the registrar for adjudication. She gaily remarked that she had no idea what it was all about, and seemed rather disappointed that there were not more people present, and that the proceedings were so brief. However, on their conclusion, she arrayed herself provocatively in front of the registrar, smiled coyly, and said "Wouldn't you like to take me out to dinner tonight?"

J. K. H.

ILLEGALITY AND CONTRACTS OF CARRIAGE

In the course of his judgment in the recent case of *Archbolds (Freightage), Ltd.* v. *S. Spanglett, Ltd.* [1961] 2 W.L.R. 170; p. 149, *ante*, Pearce, L.J., said: "If a contract is expressly or by necessary implication forbidden by statute, or if it is *ex facie* illegal, or if both parties know that though *ex facie* legal it can only be performed by illegality or is intended to be performed illegally, the law will not help the plaintiffs in any way that is a direct or indirect enforcement of rights under the contract." Devlin, L.J., said that these principles are accompanied by "many pitfalls," but their application may be illustrated by reference to *Re an Arbitration between Mahmoud and Ispahani* [1921] 2 K.B. 716.

In that case the plaintiff sold to the defendant a quantity of linseed oil and, at that time, the Seeds, Oils and Fats Order, 1919, required that any person who should "buy or sell or otherwise deal in," *inter alia*, linseed oil, should have a licence issued by or under the authority of the food controller. The plaintiff had a licence under the order, and, before entering into the contract, asked the defendant whether he had such a licence and the defendant told him that he had. In fact he had not and he (the defendant) subsequently refused to accept delivery of the linseed oil on the ground that the contract was illegal as he (the defendant) did not have the necessary licence. The plaintiff claimed damages for non-acceptance of the oil but his action failed because, in view of the fact that the defendant had no licence, the contract of sale was prohibited by the order and was therefore illegal, and as the prohibition was in the public interest no claim could be made under the contract. Scrutton, L.J., said: "The contract was absolutely prohibited; and in my view, if an act is prohibited by statute for the public benefit, the court must enforce the prohibition, even though the person breaking the law relies upon his own illegality."

Work carried out without licence

A similar point arose in *J. Dennis & Co., Ltd.* v. *Munn* [1949] 2 K.B. 327, where the plaintiff company, who were builders, carried out work for the defendant after being assured by the defendant that she had the necessary licence required by the Control of Buildings (No. 8) Order, 1947.

In fact the licence which had been granted to her did not cover the whole of the work and the plaintiff company were unable to recover their charges in respect of that part of the work which was illegal. Denning, L.J., advised builders that they undertook work at their own risk, unless there was a licence to cover it. In his lordship's view, they should not simply take the owner's word that there is a licence, but should ask to see it as, if they do not do so and it turns out that he has no licence at all, "they have acted illegally and can recover nothing." In this case, the contract between the parties for carrying out that part of the work which was unlawful was forbidden by the statutory order by implication; in *Mahmoud's* case, *supra*, the contract for the sale of linseed oil was expressly forbidden by the statutory order; and in both cases the plaintiffs were unable to enforce their contractual rights.

However, these decisions were distinguished in *Archbolds (Freightage), Ltd.* v. *S. Spanglett, Ltd., supra*, where the defendants were furniture manufacturers in London and the plaintiffs were carriers with offices in London and Leeds. The defendants' vans had "C" licences under the Road and Rail Traffic Act, 1933, which enabled them to carry the defendants' own goods but did not allow them to carry for reward the goods of others. In the belief that the defendants' vehicles had "A" licences which enabled them to carry the goods of others for reward, the plaintiffs employed the defendants to carry for them a part load of goods on the defendants' van which was taking some of the defendants' own furniture from London to the Leeds area. Having delivered these goods, the defendants' driver contacted the plaintiffs' office in Leeds to see if they could supply him with "a return load." The plaintiffs obliged with two hundred cases of whisky but, in the course of the journey to London, as a result of the driver's negligence, the whisky was stolen. On a claim by the plaintiffs for damages for loss of the whisky, the defendants pleaded the illegality of the contract of carriage in that their van did not have an "A" licence as required by the Act of 1933. Slade, J., held that the plaintiffs did not know that the contract was to be carried out in an illegal manner and that their claim for damages should succeed. The defendants appealed.

Contract not expressly forbidden

The Court of Appeal (Sellers, Pearce and Devlin, L.JJ.) saw no reason to disturb the finding of Slade, J., that the plaintiffs did not know or should not have known that the defendants' van had only a "C" licence and, as this was not a case where the plaintiffs could assert a cause of action without relying on the contract (cf. *Bowmakers, Ltd.* v. *Barnet Instruments, Ltd.* [1945] 1 K.B. 65), their lordships were required to decide whether the contract of carriage was prohibited by statute, expressly or by implication, or whether it was *ex facie* illegal. Pearce, L.J., had little hesitation in deciding that the contract of carriage was not expressly forbidden by the Act of 1933 as "the statute merely regulated the means by which carriers should carry goods." In *Mahmoud's* case the object of the order was to prevent (except under licence) a person buying and a person selling linseed oil, and both parties were liable to penalties: in *Archbold's* case the contract for the carriage of the plaintiffs' whisky was not the subject of such a prohibition.

Could it then be said that the contract of carriage was forbidden by implication? The Court of Appeal answered this question, too, in the negative. Section 1 of the Act of 1933 provided that "no persons shall use a goods vehicle on a road for the carriage of goods . . . except under licence" and it further provided that such use shall be an offence. If the plaintiffs had been aware of the true facts they would have been guilty of aiding and abetting the defendants but, as they had acted in good faith, they were not guilty of any offence under the statute as they had not "used" the vehicle on a road for the carriage of goods. The object of the 1933 Act was not to interfere with the owner of goods or his facilities for transport, but to control those who provided the transport with a view to promoting its efficiency. Unlike *Dennis's* case, where the object of the order was to prevent, by imposing liability to penalties on both parties, owners from performing unlicensed building operations and the builders from carrying out the work for them, the Act of 1933 simply imposed penalties upon those who "used" vehicles in contravention of its provisions, not upon those who contracted for their goods to be carried. For this reason the defendants had failed to satisfy the court that contracts by the owner for the carriage of goods were within the ambit of the implied prohibition of the 1933 Act.

Contract *ex facie* illegal?

The last question was whether the contract for the carriage of whisky, which their lordships had found not to be expressly or impliedly forbidden by statute, was *ex facie* illegal. In other words, where one party is ignorant of a fact that will make the performance of a contract illegal, is the innocent party barred from obtaining relief against the guilty party? In the absence of authority supporting the defendants' contention that an affirmative reply should be given to this question, Pearce, L.J., did not feel "compelled to so unsatisfactory a conclusion, which would injure the innocent, benefit the guilty, and put a premium on deceit." In his lordship's view, such a conclusion could only derive from public policy and, in the case which was then before him, he did not think that public policy constrained the court to refuse its aid to the plaintiffs. It will be seen, therefore, that the contract of carriage was not prohibited by statute, expressly or by implication, and it was not *ex facie* illegal. In view of these findings, the Court of Appeal affirmed the decision of Slade, J., that the plaintiffs were entitled to damages in respect of the loss of the consignment of whisky which was stolen from the defendants as a result of their negligence, illegality affording no defence.

D. G. C.

WAR SETTLEMENT INSURANCE (GERMANY)

The Insurance Contracts (War Settlement) (Germany) Order, 1961, which has been laid before Parliament in draft form, gives effect to an agreement made on 28th January, 1960, between Her Majesty's Government and the Government of the Federal Republic of Germany relating to contracts of insurance and contracts and treaties of reinsurance made before 3rd September, 1939, between parties who became enemies as a result of the war with Germany which began on that date. The Schedule to the order contains provisions to maintain in force or determine these contracts and treaties and to deal with the consequences thereof. The order also divests the Custodians of Enemy Property of any rights and liabilities relating to these contracts and treaties now vested in them by orders made under the Trading with the Enemy Act, 1939. The order would come into force three months after the exchange of the instruments of ratification of the agreement.

OVER THE GARDEN HEDGE—I

THE proper position of boundaries physically represented by hedges on the land conveyed was, *inter alia*, in point in each of two recent cases, namely, *Re Boyle's Claim* [1961] 1 W.L.R. 339, and *Weston* v. *Lawrence Weaver, Ltd.* [1961] 2 W.L.R. 192, both noted at p. 155, *ante*. Precision as to the parcels is, of course, one of the more important and more difficult to achieve of the objects of practical conveyancing. Where the property conveyed is, in fact, bounded by physical features on the land, such as hedges, precision is nonetheless difficult, even if reliance is placed on plans. This difficulty is recognised by condition 17 (3) of The Law Society's Conditions of Sale, 1953 :—

> "Provided that the general boundaries can be sufficiently indicated, the vendor shall not be required to define the exact boundary line where the same passes along or near to any wall, hedge, fence or ditch . . ."

and by condition 12 (2) of the National Conditions of Sale, 17th ed. :—

> "The vendor shall not be bound to show any title to boundaries, fences, ditches, hedges, or walls . . ."

The purpose of these conditions is to avoid boundary disputes with the vendor. Thus, in speaking of the entitlement of a purchaser to have a plan on the conveyance, Swinfen Eady, J., in *Re Sansom and Narbeth's Contract* [1910] 1 Ch. 741 (at p. 749) said :—

> "In the case of a considerable estate where the contract does not contain any plan, if a plan were to be insisted on showing the abuttals, hedges, ditches, streams and boundaries at every point, the form of the conveyance, so far as regards the accuracy of the plan, might lead to much litigation—that is, if the exact boundaries had to be defined at every point before the conveyance was agreed between the parties."

The standard conditions of sale obviate such litigation.

General boundaries

The "general boundaries rule" in registered conveyancing might be thought to have a similar purpose of preventing boundary disputes; indeed this is stated to be so on p. 18 of that useful little book "Concise Land Registration Practice" written by Mr. T. B. F. Ruoff, senior registrar of H.M. Land Registry. Unfortunately, the result of the rule (given below) is not at all to prevent boundary disputes but instead merely to prohibit the decision of any dispute by simply referring to the Registry's plans. The rule, which shows a fine appreciation of the difficulties of precision, for which it can hardly be blamed, is as follows (r. 278 of the Land Registration Rules, 1925) :—

> "(1) Except in cases in which it is noted in the Property Register that the boundaries have been fixed, the filed plan or General Map shall be deemed to indicate the general boundaries only.
>
> (2) In such cases the exact line of the boundary will be left undetermined—as, for instance, whether it includes a hedge or wall and ditch, or runs along the centre of a wall or fence, or its inner or outer face, or how far it runs within or beyond it; or whether or not the land registered includes the whole or any portion of an adjoining road or stream.
>
> (3) When a general boundary only is desired to be entered in the register, notice to the owners of the adjoining lands need not be given.
>
> (4) This rule shall apply notwithstanding that a part or the whole of a ditch, wall, fence, road, stream, or other boundary is expressly included in or excluded from the title or that it forms the whole of the land comprised in the title."

The simple result of this rule is, as already stated, that where a boundary dispute (as opposed to a property dispute) involving registered land arises, the filed plan (or the plan on the land certificate) is not conclusive: see the Court of Appeal decision in *Lee* v. *Barrey* [1957] Ch. 251, where the plan on an earlier filed transfer prevailed. The practical consequence following from this decision should have been that a purchaser ought to investigate the plans (if any) on filed transfers of registered land, but this consequence was hastily denied by Practice Note No. 27, 54 *Law Society's Gazette* (1957), p. 450, so that practice continues as before. That Practice Note concludes by commenting that—

> "should *actual monetary loss* occur because the registry makes a mistake in drawing its maps, a claim for compensation would lie under the provisions of s. 83 of the Land Registration Act, 1925, notwithstanding that the land was registered with general boundaries."

Rectification and indemnity

The caution inherent in the words "actual monetary loss" was demonstrated in *Re Boyle's Claim, supra*, which concerned a claim for indemnity in respect of loss allegedly suffered by the claimant through the rectification of one of the boundaries to his land. The land had been transferred to the claimant by reference to a plan on an earlier conveyance which showed that the plot was irregular in shape, and on which, on the boundary in question, there appeared the words "centre of hedge." The claimant became registered as proprietor of the plot with an absolute title, the file plan showing the irregularity in shape but not referring to the hedge. Subsequently the claimant's next-door neighbour obtained a county court order for rectification under s. 82 of the Land Registration Act, 1925, the irregularity in shape of the claimant's plot being rectified by a thin triangle (100 feet long and 5 feet wide at its base) being cut off the plot and attached to that of the next-door neighbour. In the present case, two facts were alleged by the claimant and not disputed by the respondent (who was the Attorney-General representing the trustees of the insurance fund maintained under s. 85 of the Land Registration Act, 1925). First, a small strip of his next-door neighbour's garage had always crossed the boundary as it was before rectification. Second, at the time of his purchase a hawthorn hedge had run along the greater part of the boundary as it was before rectification, though later the hedge had been cut down. Since the boundary physically represented on the land by the hedge had already been rectified, the case proceeded on the premise that the hedge had incorrectly represented the boundary (though it does not appear from the reports why this was so). The decision as to indemnity depended entirely upon whether, in the special context of registered land, the claimant had suffered loss by the rectification.

It is natural, if not inevitable, where there is, in fact, a hedge between two plots (or thereabouts—here it was at the very most 5 feet away from the correct boundary), to assume that the hedge represents the boundary. Therefore, this decision of Wilberforce, J., that indemnity was recoverable in respect of rectification in such circumstances should enable practitioners to advise their clients with some confidence that they may act on the assumption that boundaries at present shown in Land Registry plans are correct, despite the earlier decision in *Lee* v. *Barrey, supra*. Otherwise, the "general boundaries rule" would not only encourage boundary disputes but also create financial hazard.

Overriding the loss

A general discussion of the rules as to the complementary remedies of rectification and indemnity forms no part of this article. The claim in *Re Boyle's Claim* was made under s. 83 (1) of the Land Registration Act, 1925, which states that—

> "Subject to the provisions of this Act to the contrary, any person suffering loss by reason of any rectification of the register under this Act shall be entitled to be indemnified."

In opposing the claim reliance was placed on the decision of Clauson, J., dismissing a claim for indemnity in *Re Chowood's Registered Land* [1933] Ch. 574, the only substantial occasion on which such a claim had come before the courts :—

> "The basis of the decision was that, as the land was at all times subject to overriding interests, rectification of the register for the purpose of giving effect to . . . overriding interests would not put the applicants in any worse position than they were before the rectification and consequently it could not be said that they had suffered any loss"

(per Wilberforce, J., at [1961] 1 W.L.R. 344). It is perfectly true that all registered land is, unless the contrary is expressed on the register, to be deemed to be subject to overriding interests : s. 70 (1) of the Land Registration Act, 1925, which specifies in twelve paragraphs what the overriding interests are.

Chowood's case concerned para. (*f*) of s. 70 (1), namely, "rights acquired or in course of being acquired under the Limitation Acts." It was argued in the present case that para. (*g*) applied, namely, "the rights of every person in actual occupation of the land . . ." The argument was that, at the date when the claimant acquired his registered title (which was held to be the relevant date at [1961] 1 W.L.R. 344), the next-door neighbour (or his predecessor in title) had been in actual occupation of the disputed triangle of land ; that therefore the claimant took subject to an overriding interest ; and that therefore, as in *Chowood's* case, the claimant suffered no loss by rectification to give effect to the overriding interest. However, Wilberforce, J., held that, since at the relevant date the disputed triangle was on one side of a hawthorn hedge, the next-door neighbour (or his predecessor in title) was not in actual occupation of that land. The respondent's argument failed and the claimant was entitled to indemnity.

Finding qualified

This finding as to non-occupation, on which the claimant's entitlement to indemnity succeeded, was qualified nevertheless so far as the encroaching portion of the next-door neighbour's garage was concerned. In respect of that portion only, the next-door neighbour was held (at [1961] 1 W.L.R. 345) to be in actual occupation of the land and to that extent the claim for indemnity necessarily failed. As to this latter aspect, reference may also be made to *Hopgood* v. *Brown* [1955] 1 W.L.R. 213 (C.A.) (where, in effect, an oral licence to occupy land by building a garage on it was held irrevocable and binding on successors in title, thus effectively altering the boundary without writing, let alone a deed), and to *Truckell* v. *Stock* [1957] 1 W.L.R. 161 (C.A.) (where projecting footings and eaves passed with the land although not shown on the ground level plan by reference to which the land was conveyed).

Due to the practical difficulties already mentioned of ascertaining the precise boundaries of land where there are hedges, walls, fences and/or ditches, the decision of Wilberforce, J., that indemnity may be claimed on rectification of the boundary is clearly to be welcomed by all concerned, except perhaps the trustees of the Land Registry insurance fund. On the other hand, it might be added, in passing, that the decision in *Chowood's* case is in the writer's opinion most inconvenient, whatever the force of its logic. The major defect in the system of registered conveyancing is generally accepted (see, for example, at p. 43 et seq. of vol. 3 of Key & Elphinstone's Precedents in Conveyancing (15th ed.) and "Law in a Cool Climate—VII" (1960), 104 Sol. J. 818) to be the risks borne by purchasers in respect of overriding interests. A purchaser takes subject to overriding interests, not all of which are legal interests, whether or not he has notice of their existence. These interests and the corresponding risks are far more numerous than interests with a like binding effect in unregistered conveyancing. The risks taken by a purchaser were recently illustrated by *Bridges* v. *Mees* [1957] Ch. 475 (title by adverse possession) and *Grace Rymer Investments, Ltd.* v. *Waite* [1958] Ch. 831 (the latest of the "tenancy by estoppel" cases). It would perhaps go some way towards lessening the criticism aimed at this defect were an indemnity to be recoverable on rectification to give effect to overriding interests.

Finally, however, in all fairness it must be pointed out that in *Re Boyle's Claim, supra*, the claimant was better off than he would have been in unregistered conveyancing. The next-door neighbour's predecessor in title owned the fee simple absolute in possession, a legal estate, in his land right up to the correct boundary, whether or not he was in actual occupation of the disputed triangle beyond the hawthorn hedge. The claimant, like any purchaser, would have taken subject to this prior legal estate independently of notice and would have been confined to the dubious remedy of an action against his vendor based on the covenants for title implied by s. 76 of the Law of Property Act, 1925. In registered conveyancing, on the other hand, it seems that this legal estate loses some of its force in that it was held *not* to amount to an overriding interest. The argument that the claimant was always subject to his next-door neighbour's rights (as he would have been in unregistered conveyancing) and therefore suffered no loss on rectification failed and indemnity was obtainable. Thus it is apparent that in registered conveyancing a legal estate may be hidden in the inevitable uncertainty of the general boundaries rule.

(To be concluded) J. T. Farrand.

Honours and Appointments

Mr. Robert Ives has been appointed chairman of the Agricultural Land Tribunal for the Eastern Area, in succession to Mr. Donald Charles Bain, Q.C., who has resigned.

Mr. John Robert Thomas Hooper has been appointed deputy chairman of the court of quarter sessions for the county of Buckingham.

Mr. George Frederick Irvon Sunderland has been appointed deputy chairman of the court of quarter sessions for the county of Warwick.

Mr. Geoffrey Everard Delafield, solicitor, honorary vice-consul of Norway at Portsmouth, and Mr. John Marson Edney, solicitor, honorary vice-consul of Norway at Berwick-upon-Tweed, have been granted the Insignia of Chevalier of the Order of St. Olav by the King of Norway, in recognition of valuable services rendered by them in their consular capacities.

His Honour Judge Gerard Gustav Lind Smith, Mr. Robert Daniel George David and Mr. Philip Loscombe Wintringham Owen have been appointed deputy chairmen of the court of quarter sessions for the county of Chester.

Landlord and Tenant Notebook

TEMPORARY PROVISIONS ON DECONTROL

THE Landlord and Tenant (Temporary Provisions) Act, 1958, was passed and came into force on 1st August of that year and its s. 5 (4) provides that "it shall continue in force until the expiration of the period of three years beginning with the date on which it is passed, and shall then expire." The Act is one which has some unusual features, even for a statute concerned with rent control (it is not one of "the Rent Acts"), and the approach of 1st August, 1961, makes some of these features worth noting.

The Act applies to some, but not to all, dwelling-houses decontrolled by the Rent Act, 1957, s. 11 (1). Not only must the 7th November, 1956, rateable value have been £40 or less (London) or £30 or less (elsewhere), but the tenant must have been served with a "Form S" notice and be in possession by virtue of that notice.

This means that he must have held, on 7th July, 1957, either a statutory tenancy or else a controlled tenancy which would or might then come to an end by 7th October, 1958, either by effluxion of time or by notice to quit (Rent Act, 1957, Sched. IV, para. 2 (1)). A tenant under, say, a fixed term tenancy running till 8th October, 1958, could not, if his tenancy became decontrolled by the 1957 Act, benefit by the 1958 measure. Those who have benefited are not statutory tenants: the right that was given was to retain possession in the like circumstances, etc., as if the Rent Acts had not ceased to apply to the dwelling-house. For this reason, no doubt, the 1958 Act never speaks of landlords and tenants; it makes them owners and occupiers.

Modus operandi

No ex-tenant occupier is given any right to initiate any proceedings. The Landlord and Tenant (Temporary Provisions) Act, 1958, is headed "An Act to prohibit the recovery of possession, except by legal proceedings, of certain dwelling-houses released from control by subsection (1) of section eleven of the Rent Act, 1957, and to provide in certain cases for suspending for a limited period the execution of any order made *in such proceedings*; to regulate the terms and conditions as to rent and other matters to be applied in cases where possession of such dwelling-houses is retained pending the recovery of possession; and for purposes connected with the matters aforesaid." Its first section forbids owners to retake possession peacefully: *Hemmings and Wife* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720 (C.A.), would otherwise warrant such extra-legal procedure.

The importance of this feature for present purposes is that, if an action for possession is not heard before 1st August next, no suspended order can be made under the Act, even if the occupier would otherwise qualify by satisfying the four conditions of s. 3 (1): proposed new tenancy not unreasonably refused, failure to find other appropriate accommodation, no arrears of rent, and greater hardship.

Before and after 1st August

Up to 1st August, however, a court, on being satisfied that the conditions are fulfilled, "shall suspend the execution of any order for possession made in the proceedings for such period, not being less than three nor more than nine months from the date of the order, as the court thinks fit" (s. 3 (1)). When the date of expiration comes, the position is taken care of by s. 5 (5): "On the expiration of this Act subsection (2) of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), shall have effect as if this Act had been repealed by another Act; and without prejudice to the generality of the foregoing provision, any order for suspension of execution then in force shall continue in force and may be revoked as if this Act had not expired."

If an occupier does obtain a suspension extending beyond 1st August, the "rent" (the Act uses this expression, presumably in default of a better one) will be governed by s. 2 (1): twice the 7th November, 1956, gross value plus rates borne by the owner, and a reasonable charge for any services and furniture provided; the occupier will be responsible for internal decorative repairs and the owner for all other repairs; also, if the owner should have a Rent Act ground for possession, he will be able to apply for revocation of the suspension, under s. 3 (6) (*b*).

Inherent jurisdiction?

It follows that a landlord of a decontrolled tenancy who has served a "Form S" notice which has expired and who has instituted proceedings for recovery of possession may be in a better position if his action is heard after 1st August than he would be in if it came on before that date; but I propose to conclude with a few brief observations on the question whether the court has inherent power to postpone possession when there is no question of decontrol or of temporary provisions on decontrol. In *Sheffield Corporation* v. *Luxford; Same* v. *Morrell* [1929] 2 K.B. 180, when the position was governed by the County Courts Act, 1888, s. 138 (". . . the judge *may* order that possession . . . be given . . . either forthwith or on or before such day as the judge shall think fit to name"), it was held that the period must be "reasonably adjusted to the circumstances of the case, including the nature of the tenancy, the term (in this case a weekly term) and the object which I think the Legislature must be taken to have had in this enactment, that is to say, to relieve the judge of the necessity of making an order for possession to be given then and there without further warning to the tenant," as Talbot, J., put it. (The premises were "council houses" and for that reason not controlled: the Protection of Tenants (Local Authorities) Bill now before Parliament would change the position.) In *Air Ministry* v. *Harris* [1951] 2 All E.R. 862 (C.A.), possession was ordered in one month, but the judge also directed that no warrant should issue without leave, and, warrants having been twice refused because the defendant could not find anywhere to go, the stay was removed by the Court of Appeal, Somervell, L.J., speaking of the "power to keep a landlord out of possession."

But the point which may arise is whether relieving the judge of the necessity mentioned by Talbot, J., will avail the defendant—who is not a tenant—and whether he has any power to keep a landlord (or rather, successful plaintiff) out of possession when not only the above-mentioned *Hemmings and Wife* v. *Stoke Poges Golf Club* supports the view that possession may be taken peaceably, but there is *Jones* v. *Foley* [1891] 1 Q.B. 730, to show that after going to law he may so act. For in that case a twenty-one days' warrant

was obtained under the Small Tenements Recovery Act, 1838, and the applicant set about removing the roof before that period had expired; the decision warrants the proposition that, though sheriffs and bailiffs are not to execute, there is nothing to prevent the successful litigant from proceeding without their aid.

R. B.

HERE AND THERE

"AN CHIURT"

CONSIDERING how desperately and how doggedly the Irish fought across the centuries to cut the connection with the English Crown, it is somewhat surprising how slow the Republic has been to remove its last lingering traces. It is as if, after a divorce terminating a long and tempestuous marriage, the former spouses were reluctant wholly to lose touch with each other. We still post our letters to Ireland in the "Country" and not the "Abroad" side of the pillar-box, which is in keeping with that rather misty indeterminate status which we have invented for Irishmen, hovering half-way between that of aliens and that of British subjects. The home of the Irish Bar is still called the King's Inns and not the President's Inns (or whatever would be its Gaelic equivalent). Though the whole judicial system is changed, the law courts in Dublin are still called The Four Courts and Bench and Bar still wear the wig of the eighteenth century which was the high-water mark of the English domination. But one small bond with the past has recently been severed. The forms of address, "My Lord" in the superior courts and "Your Worship" in the lower courts, are henceforth to be abolished. Judges will be addressed by their names and titles or, by those whose tongues are attuned to the music of their official native language, as "An Chiurt" (the Court).

MY LORDS AND OTHERS

THE English practice of addressing all superior court judges as "My Lord" would seem to be of comparatively recent origin. It is one of those tortuous pieces of customary British etiquette which it is utterly impossible to rationalise to foreigners. Up there on the Bench is a gentleman judicially described as "Mr. Justice Frankpledge." In society he is in fact Sir Francis Frankpledge. Yet in court everyone calls him "My Lord." It was not always so. Formerly, of the common law judges only the Chief of each court, King's Bench, Common Pleas and Exchequer, was entitled to be so addressed. His puisnes were simply "Sir." Somewhere in my mind I have the recollection of a report of counsel coping with simultaneous heckling from several members of the court and saying: "I shall reply to you, Sir, when I have answered My Lord." Perhaps the generalisation of "My Lord" crept in from circuit practice and the almost regal state accorded to the judge of assize as the personification (or avatar) of the sovereign. A well known piece of legal folklore tells of Mr. Justice Manisty on his first judicial circuit rising to honour the loyal toast and being pulled down by his senior, Mr. Baron Huddleston, with the admonition "Sit down, you damned fool; *we* are the Queen." A more recent piece of folklore asserts that there is currently operating a recorder who insists that at his quarter sessions *he* is the Queen. In the Court of Chancery only the Lord Chancellor was "My Lord." His subordinate judges were "Your Honour." Hence the epigram contrasting Lord Eldon's habit of reserving judgment almost indefinitely and the interminable prolixity with which Vice-Chancellor Plumer delivered his decisions:—

"To cause delay in Lincoln's Inn
Two different methods tend;
His Lordship's judgments ne'er begin,
His Honour's never end."

PUNCTUATION

THE headline in *The Times* prefaced the news from Eire with "'M'Lud' will Die Hard in Eire's Courts." But surely "M'Lud" belongs rather to English counsel. That elision has none of the music of the Irish brogue. In Eire, I think, any deviation from the severe correctness of "My Lord" would be more likely to take the form of something like "Me Lard." It appears that the expectation at the Irish Bar is that the new forms of address will take a long time to establish. One cannot alter overnight an ingrained habit of speech of twenty years' standing or more. "My Lord" is a form of punctuation rather than respect. It marks a pause for thought or for breath, or both. It gives cadence to forensic sentences. It is to them what the wig is to its wearer, an ornamental call to dignity of demeanour and expression and a rebuke to vulgar colloquialism. One hopes that "An Chiurt" will do the same work equally mellifluously with its return to the tongue the Irish spoke in those days of legendary greatness "when Malachy wore the collar of gold" and the High King at Tara was the fountain of justice.

RICHARD ROE.

"THE SOLICITORS' JOURNAL," 20th JULY, 1861

ON 20th July, 1861, THE SOLICITORS' JOURNAL reported the fall of Edwin James, Q.C.: "The Benchers of the Inner Temple have at length arrived at a decision in the case of Mr. Edwin James, which has been . . . pending before them for some months past. On Thursday evening they decided, after a long investigation and many adjournments, that Mr. Edwin James should be disbarred and the decision was ordered to be communicated to all the judges of the Superior Courts . . . We are not aware whether this communication will disclose anything more than the mere fact of . . . Mr. James being struck off the roll of the Inner Temple. It is rumoured very currently, however, that the most serious charge which the Benchers had to consider was not that in respect of which Mr. James is said to have been compelled to relinquish his seat in Parliament and the Recordership of Brighton, but another, more immediately affecting his character as an advocate. But, as all the proceedings have been conducted with secrecy, it is not likely that the public or the profession will ever have any opportunity of learning upon authority either the specific charges or the character of the evidence which was brought against Mr. James. It has been reported that while the proceeding was still pending, Mr. James offered, if it were allowed to drop, to give an undertaking never again to practise in England or any English colony, and that he made this offer with the view of proceeding to the United States in his character of an English barrister and of obtaining leave to practise there, which will probably now be impossible. It has not yet been announced what the Government intend to do about his patent as Queen's Counsel."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Common Market Legal Problems

Sir,—With reference to the article in the *Daily Telegraph* of 8th July on solicitors setting up offices within the Common Market area and the reference to this on pp. 15 and 16 of The Law Society's annual report, there are certain aspects not mentioned which are of interest to the profession.

I observe that this matter was dealt with by a special committee on which several non-members were represented, all of whom however seem either to have practised in England or to be on the permanent staff of some big firm or organisation, and the profession may well think that the recommendations would have been more valuable had the views of solicitors who actually practise independently in the area been sought and considered.

I myself have practised in a Common Market country since the war, first on the staff of a public body and for the last few years as the representative and partner for the country in question on the spot, and so feel that I can claim to have some experience. I appreciate the importance of the Common Market and its implications and soon after the production of the treaty drew the attention of our local chamber of commerce to them, but I suggest most strongly that, on the face of what is published in the annual report with reference to the desirability of English solicitors opening offices, either the committee has not had all the facts before it or their omission from the annual report is very misleading to the profession.

To begin with, I am left speechless by the suggestion, which seems to have The Law Society's blessing, that it would be in order for solicitors with influential clients to inform them that they could only properly advise them if they had offices on the continent and that it might therefore be in the client's interest to provide their solicitors with office accommodation and even staff on the continent.

Such an attitude by a body which is so particular as to professional etiquette seems surprising, to say the least of it, as I suggest that it is nothing less than encouraging unfair competition with firms of solicitors who are already established in Common Market countries and have to bear all the expenses themselves of offices and staff.

Again, I would suggest that before encouraging firms to open offices on the continent The Law Society should clarify its attitude. At present the support received by a solicitor who practises abroad leaves much to be desired. The Society is happy to accept full fees for the issue of a practising certificate and to consider him subject to their rules as to professional conduct, but should he require their support it is another matter. For instance, should he have trouble over getting his accounts paid and ask the Society to tax them, they reply that they are not competent to do so and will not even consider them on the same basis as that of a firm submitting a similar bill in England; the result is that any court here feels that as one's professional body will not give an opinion the bill is clearly not in order and behaves accordingly.

Again, a fact which is known to the Society, if not to the special committee, which in any case should have been aware of it, is that a solicitor practising in some Common Market countries is considered as nothing better than an unqualified legal tout and treated as such by some local Bar associations. The difference in the set-up of the legal professions has to be taken into account; virtually nobody on the continent knows exactly what a solicitor is or does, and feels that one appearing here is going to take work from a greatly overpopulated Bar. It is possible to correct this idea in time, with great care, but the fact remains that solicitors normally do things which members of the Bar are not allowed to do here, e.g., visit the offices or homes of their clients. Here there is no person equivalent to the solicitor; the client goes to the barrister direct with his troubles; if there are pleadings in a civil case the barrister refers them to an *avoué*, whereas the notary deals with questions dealing with land, successions, marriage contracts, formation of companies, etc. Thus the barrister, quite wrongly incidentally, in most cases feels himself directly attacked by the presence of a solicitor.

It must not be forgotten that, in addition to such things as an identity card, what is known as a professional card is needed, and this is not easy to obtain, and were there any idea that solicitors were likely to come over in numbers there would be very strong pressure to prevent any being granted, and this would probably be successful in practice even if not announced directly as policy.

In so far as the economic angle is concerned it must be remembered that costs are much higher in general than in England, in so far as actual living is concerned. Any person representing an English solicitor's office here would require rather over £200 a month to live in any comfort and keep up appearances; a good secretary speaking English and two national languages can command £100 a month; clients have just recently had to pay this to obtain one. In so far as business is concerned, the position is not all that encouraging. My firm has been represented in this country for a great many years but despite this, if I had not a secondary activity, the earnings would not be sufficient to enable me to continue without great hardship if at all, and I am the only solicitor living and practising, as far as I know, in the country in question.

The reason for this is not hard to seek. Apart from a little divorce, a few successions, accidents, etc., and general work of this nature which may be said just to keep the wheels turning, the only profitable work is company work and here, as in I think most of the Common Market countries, the chartered accountants have got a virtual monopoly; indeed the only company work we have is that referred to us by solicitors in England; the rest is either done by members of English firms coming over or by the chartered accountants, who must have about 99 per cent. of it, at a conservative estimate. Just as an example, in the last five years we have never once had chartered accountants send us a single client or piece of legal business, although we have sent them clients where proper.

Again it must be remembered that an English solicitor here can really only be of service, in so far as formation is concerned, in preparatory work, although here he could be invaluable, that the actual formation has to be done by the notary and that once formed it is a company of the country and the work is almost entirely for a barrister of the country, if their suspicion of a solicitor taking work away from them is not to be justified. Furthermore, the English solicitor, to be of value in the preparatory work, not only needs to know the language and country completely, but also quite a lot of the applicable law, habits, ways of thought and customs of the country in question, and these are not learned in five minutes and no amount of purely book learning can adequately replace them.

The Law Society's suggestion seems to be that better advice could be given on contracts were a continental office to exist; this is no doubt correct were the solicitor there to have all the requisites outlined above in addition to a considerable knowledge of the Rome Treaty and its workings. I feel, however, that such an office would only be economically justified if an English company was so large as to be prepared to employ a whole-time solicitor for this purpose, as I doubt whether the amount of remuneration for continental contract work done by any one firm of solicitors in any given Common Market country represents a general average of £5,000 a year, which is the annual minimum before it would be a paying proposition to install a continental office.

It seems to me therefore that, provided the English solicitors in England know their Rome Treaty and have had their attention drawn to the more important points, they would find it more profitable to advise from England, in most cases, seeking local advice as and where necessary. In this connection it must be borne in mind that the English translation of the Common Market treaty is only considered to be a working document, leaving much to be desired in some respects, and that were England to join the Common Market it would have to be revised or rewritten before it could be accepted as an official version. Again each country which is a member uses the version of the treaty in its own language, all languages being equal, and despite all the care taken over translations there can be and are important differences in shades of meaning. To have an office in a single Common Market country as opposed to England would only be really effective for that particular country. To this must be

added the fact that by virtue of art. 88 each country interpreted the Treaty according to its own reading of it until art. 87 came into force, that it will be some considerable time before the Common Market court has created a body of jurisprudence on which advisers can safely base themselves, and that, until it has, advice can only be given with a certain reserve and that consequently the problems may be more clearly seen from England than from nearer at hand, where, in the dust of local conflict, it may be more difficult to see the wood for the trees.

I fear that this is already a very long epistle, and will therefore conclude, although, as may be imagined, there is much more that could be said on the subject, enough having, I hope, been indicated to warn other members of the profession that the setting up of a continental office should not be lightly undertaken, and that there are very important considerations to which no reference is made in The Law Society's annual report.

"O TEMPORA! O MORES!"

"Within the Common Market."

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Finance Bill [H.C.] [7th July.

Read Second Time:—

Barristers (Qualification for Office) Bill [H.C.] [10th July.
Crown Estate Bill [H.C.] [12th July.
Eyemouth Harbour Order Confirmation Bill [H.C.] [12th July.
Housing Bill [H.C.] [11th July.
Human Tissue Bill [H.C.] [10th July.
North Atlantic Shipping Bill [H.C.] [10th July.

Read Third Time:—

Land Drainage Bill [H.C.] [11th July.
London County Council (Money) Bill [H.C.] [11th July.
Police Federation Bill [H.C.] [13th July.
Public Authorities (Allowances) Bill [H.C.] [13th July.
Stationers' and Newspaper Makers' Company Bill [H.C.] [11th July.

In Committee:—

Highways (Miscellaneous Provisions) Bill [H.C.] [12th July.
Licensing Bill [H.C.] [13th July.
Rivers (Prevention of Pollution) Bill [H.C.] [12th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

British Transport Commission (No. 2) Order Confirmation Bill [H.C.] [11th July.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the British Transport Commission.

Read Third Time:—

City of London (Various Powers) Bill [H.L.] [10th July.
Trustee Investments Bill [H.L.] [12th July.

B. QUESTIONS

COMMITTEE ON SUNDAY ENTERTAINMENTS AND TRADING

Mr. R. A. BUTLER announced the appointment of a Departmental Committee to review the law (other than the Licensing Acts) relating to Sunday entertainments, sports, pastimes and trading in England and Wales and to make recommendations: chairman, Lord Crathorne; members: Mr. John Arbuthnot, M.B.E., T.D., M.P.; The Rt. Hon. J. Chuter Ede, C.H., M.P.; Mr. Robin Huws Jones, M.A., B.Sc.(Econ.); Mr. W. A. Morrison, O.B.E.; The Hon. Sylvia Fletcher Moulton, C.B.E.; Mr. Norman Pentland, M.P.; and Mr. Peter Rawlinson, Q.C., M.P.; assessor: Mr. H. W. Stotesbury, Home Office; secretary: Miss M. Hornsby, Home Office. [13th July.

STATUTORY INSTRUMENTS

Adoption Agencies (Scotland) Regulations, 1961. (S.I. 1961 No. 1270 (S. 80).) 5d.

Building Society (Amendment) Rules, 1961. (S.I. 1961 No. 1237.) 4d.

Charities (Baptist, Congregational and Unitarian Churches and Presbyterian Church of England) Regulations, 1961. (S.I. 1961 No. 1282.) 5d.

Claro Water Board (Lower Dunsforth) Order, 1961. (S.I. 1961 No. 1290.) 5d.

Draft **Cotton Doubling** Reorganisation Scheme No. 2 (Confirmation) Order, 1961.

Draft **Cotton Finishing** (Woven Cloth) Reorganisation Scheme No. 2 (Confirmation) Order, 1961.

Draft Cotton Finishing (Yarn Processing) Reorganisation Scheme No. 2 (Confirmation) Order, 1961.

Draft **Cotton Spinning** Reorganisation Scheme No. 2 (Confirmation) Order, 1961.

Draft **Cotton Weaving** Reorganisation Scheme No. 2 (Confirmation) Order, 1961.

Gretna–Stranraer–Glasgow–Stirling Trunk Road (North of Cumbernauld to Haggs Diversion) Order, 1961. (S.I. 1961 No. 1268 (S. 78).) 6d.

Indian Military Widows' and Orphans' Fund (Amendment) Rules, 1961. (S.I. 1961 No. 1249.) 5d.

Injuries in War (Shore Employments) Compensation (Amendment) Scheme, 1961. (S.I. 1961 No. 1246.) 5d.

Draft **Ionising Radiations** (Sealed Sources) Regulations, 1961.

Lead Paint (Prescribed Leaflet) Order, 1961. (S.I. 1961 No. 1271.) 5d.

Loch Lee Water Board Order, 1961. (S.I. 1961 No. 1284 (S. 81).) 5d.

London–Edinburgh–Thurso Trunk Road (Cononbridge and Maryburgh By-Pass) Order, 1961. (S.I. 1961 No. 1238 (S. 75).) 5d.

London–Fishguard Trunk Road (Windsor Road, Neath, and Other Roads) Order, 1961. (S.I. 1961 No. 1252.) 5d.

London–Norwich Trunk Road (Bradman's Lane Diversions) Order, 1961. (S.I. 1961 No. 1264.) 5d.

London Traffic (Prescribed Routes) (Westminster) Regulations, 1961. (S.I. 1961 No. 1278.) 4d.

London Traffic (Prohibition of Waiting) (Hertford) (Amendment) Regulations, 1961. (S.I. 1961 No. 1233.) 4d.

London Traffic (Prohibition of Waiting) (Sevenoaks) Regulations, 1961. (S.I. 1961 No. 1244.) 5d.

National Health Service (Travelling Allowances, etc.) Regulations, 1961. (S.I. 1961 No. 1259.) 5d.

National Health Service (Travelling Allowances, etc.) (Scotland) Amendment Regulations, 1961. (S.I. 1961 No. 1261 (S. 76).) 5d.

Newport–Shrewsbury Trunk Road (South of Pandy Station, Diversion) Order, 1961. (S.I. 1961 No. 1253.) 5d.

North of Worcester (North Claines–Warndon) Trunk Road Order, 1961. (S.I. 1961 No. 1263.) 6d.

Nurses (Area Nurse-Training Committees) Order, 1961. (S.I. 1961 No. 1260.) 5d.

Nurses (Regional Nurse-Training Committees) (Scotland) Amendment Order, 1961. (S.I. 1961 No. 1262 (S. 77).) 5d.

Police (No. 2) Regulations, 1961. (S.I. 1961 No. 1283.) 5d.

Police (Scotland) Amendment (No. 2) Regulations, 1961. (S.I. 1961 No. 1311 (S. 82).) 5d.

Probation (Scotland) Amendment Rules, 1961. (S.I. 1961 No. 1269 (S. 79).) 5d.

Draft **Railway Running Sheds** (No. 2) Regulations, 1961.

South Staffordshire Water (Wishaw) Order, 1961. (S.I. 1961 No. 1247.) 5d.

Stockport Water Order, 1961. (S.I. 1961 No. 1248.) 5d.

Stopping up of Highways Orders, 1961:—

County of Buckingham (No. 8). (S.I. 1961 No. 1265.) 5d.

City and County Borough of Gloucester (No. 1). (S.I. 1961 No. 1275.) 5d.

County of Hertford (No. 4). (S.I. 1961 No. 1266.) 5d.

County of Kent (No. 10). (S.I. 1961 No. 1256.) 5d.

County of Lancaster (No. 21). (S.I. 1961 No. 1254.) 5d.

County of Lancaster (No. 22). (S.I. 1961 No. 1255.) 5d.

London (No. 14). (S.I. 1961 No. 1276.) 5d.

County of Northampton (No. 4). (S.I. 1961 No. 1277.) 5d.

City and County Borough of Sheffield (No. 3). (S.I. 1961 No. 1257.) 5d.

County of Wilts (No. 5). (S.I. 1961 No. 1285.) 5d.

Street Playgrounds Orders (Procedure) (England and Wales) Regulations, 1961. (S.I. 1961 No. 1242.) 5d.

Town and Country Planning (Atomic Energy Establishments Special Development) Order, 1961. (S.I. 1961 No. 1295.) 5d.

Draft **Visiting Forces** (Application of Law) Order, 1961.

Wages Regulation (Sugar Confectionery and Food Preserving) (Amendment) Order, 1961. (S.I. 1961 No. 1272.) 5d.

SELECTED APPOINTED DAYS

July	
14th	Agriculture (Stationary Machinery) Regulations, 1959 (S.I. 1959 No. 1216) fully operative.
15th	Reciprocal Enforcement of Foreign Judgments (Germany) Order, 1961. (S.I. 1961 No. 1199.)
17th	General Optical Council Disciplinary Committee (Legal Assessor) Rules, 1961. (S.I. 1961 No. 1239.)
21st	Wages Regulation (Sugar Confectionery and Food Preserving) (Amendment) Order, 1961. (S.I. 1961 No. 1272.)
22nd	Industrial and Provident Societies Act, 1961.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Stamp Duty—Cancellation of Contract for Sale

Q. *A*, Ltd., is controlled by *A*. Some time ago *A* entered into a contract for the sale of his private house to *A*, Ltd., which paid him the purchase price, but did not take a conveyance, and permitted *A* to remain in occupation under a tenancy at a low rent. *A* is now considering the repurchase of the house from the company at the same price as that at which he sold. Although *A* at present holds the property on trust for the company, is there any reason why the resale should not take the form simply of a rescission of the contract under which the company bought and the return of the money which the company then paid to *A*? Or must there be a reconveyance or release of the company's equitable interest, to bear stamp duty ad valorem?

A. We can see no reason whatsoever why the original contract should not, as you suggest, simply be cancelled—orally if you wish, attracting no stamp duty. Compare the provision of s. 59 (6) of the Finance Act, 1891, for repayment of ad valorem duty if paid on a contract later cancelled. Also, of course, from a practical point of view, there is no sanction in the circumstances to enforce any payment of stamp duty by *A*. The cancelled contract, not being a document of title, will not come within s. 117 of the Stamp Act, 1891.

Trust for Sale—Proceeds of Sale Received by Attorney

Q. A lease for ninety-nine years was granted to Mr. and Mrs. *X* on trust for sale as joint tenants beneficially. They have signed a contract to sell the lease to Mr. *Y*. Mr. and Mrs. *X* have since gone abroad. Mr. *X* has given a specific power of attorney, duly filed at the Central Office, to his solicitor, Mr. *Z*, to assign the lease to Mr. *Y*. Mrs. *X* has given an exactly similar power also to Mr. *Z*. Mr. *Z* will accordingly execute the assignment of the lease (*a*) as the attorney of Mr. *X*, and (*b*) as the attorney of Mrs. *X*. Accordingly one person only will receive the proceeds of sale. Is there, in your view, any objection to this?

A. It is true that capital money cannot "be paid to or applied by the direction of fewer than two persons as trustees for sale" (s. 27 (2) of the Law of Property Act, 1925, as amended in 1926) and that Mr. *Z* is only one person. But presumably there is a receipt clause in the assignment so that the assignee may pay the capital money, i.e., the proceeds of sale, to Mr. *Z* as the solicitor of Mr. and Mrs. *X*: s. 23 (3) (*a*) of the Trustee Act, 1925, and s. 69 (1) of the Law of Property Act, 1925. Thus the capital money will be received, and no doubt thereafter applied, by Mr. *Z* by the direction of two persons as trustees for sale, namely, Mr. and Mrs. *X*, within s. 27 (2). We consider that there is no objection to the above.

Loss of Privacy on Erection of Flats

Q. Quite recently *X* Borough Council erected a high block of flats at the immediate rear of *A's* property, the side wall of the block being distant only 20 feet from the rear fence of *A's* garden. No notice of the proposed development was served upon *A* but, when subsequently he learned of the proposed development, he inspected the plans at the council's offices, which showed that there would only be one window constructed in the side of the block facing his property, whereas four windows and two balconies have in fact been constructed directly overlooking *A's* garden and the rear windows of his property, thereby causing serious loss of privacy, obstruction of outlook and interference with the enjoyment of his property. He has obtained a report from a professional valuer to the effect that his property has depreciated in value by £500 by reason of the erection of these flats. *A's* property has no legal or prescriptive right of light or air, so far as is known. Can *A* claim compensation from *X* Council for injurious affection for loss of privacy, outlook, general amenities, and reduction in value of his property under the Lands Clauses Consolidation Act, 1845, or under any other statute or right at common law?

A. There is no right in law to privacy from development on neighbouring property, nor is there a right to a view, nor, subject to the law of nuisance, to general amenities. The building of the block of flats does not, in our opinion, constitute an actionable nuisance. Compensation for injurious affection is only recoverable under s. 68 of the Lands Clauses Consolidation Act, 1845, when the injurious affection arises from that which, if done without statutory authority, would give rise to a cause of action: *Ricket* v. *Metropolitan Railway* (1867), L.R. 2 H.L. 175. This is not the case here, so that compensation is not recoverable under the 1845 Act, and we know of no other statutory provision under which it could be recovered. We assume that *A's* land is not entitled to the benefit of any restrictive covenants over the land on which the flats have been built. No notice of the proposed development had to be served on *A* under any provision of the Town and Country Planning Acts. If the flats as built do not conform with the plans for which planning permission has been granted under these Acts, it may be that development has taken place without permission, in respect of which an enforcement notice could be served by the local planning authority under s. 23 of the Town and Country Planning Act, 1947, who should be approached. We think it doubtful, however, whether they would be prepared to require the three extra windows to be walled up and the balconies removed. The only other point we would mention is that consideration should be given to the taking of appropriate action under the Rights of Light Act, 1959, to prevent the acquisition by the flats of rights of light over *A's* land.

NOTES OF CASES

These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked °, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in today's issue of "W.L.R." is set out at the end of these notes.

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

House of Lords

RATING: ART GALLERY: PUBLIC EXCLUDED FROM PART OF HEREDITAMENT

Kingston-upon-Hull Corporation *v.* Clayton (Valuation Officer)

Lord Reid, Lord Tucker, Lord Keith of Avonholm, Lord Hodson and Lord Guest. 13th July, 1961

Appeal from the Court of Appeal ([1961] 1 Q.B. 345; p. 16, *ante*).

Under an indenture of 9th December, 1919, the Ferens Art Gallery at Kingston-upon-Hull was held by Kingston-upon-Hull Corporation on a valid charitable trust to permit it to be used and enjoyed by the citizens of the City and County of Kingston-upon-Hull and the public generally as an art gallery for the exhibition of works of art in perpetuity. About two-thirds of the gallery building was used for the display of works of art and was open daily to the public without charge; the remaining third of the building, to which the public were not admitted, was used as offices and store rooms and for purposes ancillary to the running of the gallery. The Lands Tribunal, affirming the decision of the local valuation court, held that the gallery was not rateable on the ground that there was no beneficial occupation of it, and that for rating purposes the public were the occupiers. The Court of Appeal reversed that decision. The corporation appealed.

LORD TUCKER, delivering the leading opinion, said that, assuming that the extensions to the principle laid down in *Hare* v. *Putney Overseers* (1881), 7 Q.B.D. 223, up to and including the *Downham Market* case [1952] 2 Q.B. 55, were justified in law, as to which it was not necessary to express a concluded opinion, he thought that the majority of the Court of Appeal had arrived at the right conclusion after a careful examination of the provisions of the trust deed in the present case in deciding that it did not confer such rights of user on the public as to exhaust any possibility of value to the corporation who were *de facto* in occupation of the gallery. Accordingly, he would dismiss the appeal.

The other noble and learned lords agreed that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *Peter Rawlinson*, Q.C., and *J. P. Harris* (*Sharpe, Pritchard & Co.*); *W. L. Roots*, Q.C., and *Raymond Phillips* (*Solicitor of Inland Revenue*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

Court of Appeal

HUSBAND AND WIFE: MATRIMONIAL HOME: WHETHER JOINTLY ACQUIRED

Allen *v.* Allen

Lord Evershed, M.R., Harman and Donovan, L.JJ.

12th July, 1961

Appeal from Poole County Court.

The husband acquired a house in his name and was alone responsible for mortgage repayments. The husband and wife lived in the house throughout their married life, the wife earning her living and contributing to the living expenses. The parties were divorced but continued to live in the house in separate accommodation. The "husband" claimed possession of the house, but the judge held that he was not entitled to it. The "husband" appealed.

LORD EVERSHED, M.R., said that it was not clear whether the judge found that both the husband and wife contributed to the house purchase out of their own resources or not. The judge had read a citation from the judgment of Denning, L.J., in *Cobb* v. *Cobb* [1955] 1 W.L.R. 731, at p. 734, which, bereft of its context, might lead a reader to think that it was the law that if a husband and wife were both wage earners it followed, prima facie, that anything they acquired such as a house or furniture was jointly acquired. His lordship did not accept that view, nor did he think it was the law, nor was it justified by *Cobb's* case, *supra*, or *Fribance* v. *Fribance* (*No.* 2) [1957] 1 W.L.R. 384. If the judge intended to find that the parties were putting all their earnings into a joint pool out of which all expenses were to be met, then his lordship would think that the conclusion was that the house was intended to be a joint venture. But did the judge intend to find such an intention or did he find that, as the husband had paid for the house, the wife was asked to help with the other expenses? The case must be sent back for the judge to say what he intended to find the parties' intention was as to the house purchase.

HARMAN and DONOVAN, L.JJ., agreed. Case remitted to county court.

APPEARANCES: *O. Stranders*, Q.C., and *Ingram Poole* (*Barnes & Butler*, for *J. W. Miller & Son*, Poole); *C. A. Settle*, Q.C., and *Michael Hoare* (*Church, Adams, Tatham & Co.*, for *Dickinson, Manser & Co.*, Poole).

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

Chancery Division

SETTLEMENT: CONSTRUCTION: "MALE ISSUE" AND "MALE DESCENDANTS"

***In re* Du Cros' Settlement Trusts; Du Cros Family Trustee Company, Ltd. *v.* Du Cros and Others**

Pennycuick, J. 4th July, 1961

Adjourned summons.

The trustee of a settlement, dated 18th January, 1936, took out a summons to determine (1) whether on its true construction the expression in the settlement "male issue for the time being living of such of the said brothers [of the first settlor] as shall be dead" included (*a*) only the sons, or (*b*) only the sons and remoter male issue in the exclusively male line, or (*c*) all the male children and remoter issue, for the time being living of the settlor's deceased brothers; and (2) whether the expression "male descendants" of the settlor's father included (*a*) only the sons and remoter male issue in the exclusively male line, or (*b*) all the male children and remoter issue of the settlor's father.

PENNYCUICK, J., said that "issue" prima facie included all degrees. "Issue male," a term of art, had been held to include only males in the exclusively male line and, although it would yield to a contrary intention, no such intention was to be found here. "Male issue" could not be distinguished, and, therefore, question 1 must be answered in the terms of 1 (*b*). "Male descendants" was not a term of art and, apart from authority, included males descended from the *propositus* whether through males or females. In *Bernal* v. *Bernal* (1838), 3 Myl. & Cr. 559, "male descendants" had been held equivalent to "male issue" but such an interpretation of "male descendants" would yield to a contrary intention. The fact that the settlement had used the two different expressions "male issue" and "male descendants" was

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(*Continued on p. xvii*)

Ealing, Ealing Common and District.—JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, adj. Ealing Common Station, W.5. Tel. ACO 5006 (3 lines).

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evidence of a contrary intention. Question 2 must therefore be answered in the terms of 2 (*b*). Declaration accordingly.

APPEARANCES: *J. A. Wolfe, G. T. Hesketh, N. Browne-Wilkinson, D. Gidley Scott, J. Bradburn, L. H. L. Cohen, M. Roth* (*Shelton, Cobb & Co.*, for *J. J. Saunders & Co., Beachcroft & Co.*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

INCOME TAX: EXPENSES: PART OF RENT PAID BY EMPLOYER

McKie (Inspector of Taxes) *v.* Warner

Plowman, J. 7th July, 1961

Case stated by the Income Tax Commissioners.

A company required its export sales supervisor to move his home from the country to London in order to carry out his duties satisfactorily. The company took a lease of a flat in London at an annual rent of £500, for which the employee agreed to pay the company £150 a year for his occupation, the sum the company thought proper having regard to his salary. Part of his duties was to entertain foreign buyers and a room was available for their use at the flat. The General Commissioners affirmed an assessment to income tax under Sched. E in the sums of £350, being the difference between the £150 paid and the £500 rent as an emolument, for the years 1953–57, but allowed them under para. 7 of Sched. IX to the Income Tax Act, 1952, as expenses wholly, exclusively and necessarily incurred by the employee in the performance of his duties. The Crown appealed.

PLOWMAN, J., said that the question whether the £350 fell to be included in the employee's emoluments turned on the construction of s. 161 (1) of the Act of 1952. When it spoke of a body corporate incurring expense for living accommodation it followed that such accommodation must, as a matter of law, be a benefit within the meaning of the subsection irrespective of the facts relating to it. The commissioners were therefore correct to conclude that the provision of the flat was a benefit to the employee. The question whether the £350 was allowable as a deduction turned on r. 7 of Sched. IX. It was notoriously difficult for a Sched. E taxpayer to bring an expense within that rule, and to succeed he had to prove that the expense was one which he was necessarily obliged to incur and also that it was incurred " wholly, exclusively and necessarily " in the performance of his duties. The employee had failed to bring himself under either of these heads, and, further, it was only sometimes the employee's duty to entertain in the flat. Appeal allowed.

APPEARANCES: *R. W. Goff*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *H. Major Allen* (*Radcliffes & Co.*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

MINES AND MINERALS: PLANNING PERMISSION TO WORK LAND FOR FIRECLAY: WHETHER JURISDICTION TO GRANT RIGHT TO REMOVE SURFACE

****In re* Potters Clay and Coal Co., Ltd.'s Application**

Wilberforce, J. 7th July, 1961

Adjourned summons.

Under a lease, due to expire in 1955, the applicants were the lessees of certain land in Staffordshire which they worked for fireclay, coal and ironstone. In 1946 the local authority acquired the land by compulsory purchase, intending to develop it as a housing estate. Following the compulsory purchase order the applicants continued extracting the minerals from the land under licence from the National Coal Board until 1953, when the local authority gave notice that they were going to take possession of the land for the purposes of the housing estate. The applicants applied for a new lease to continue to work and win the minerals but their application was refused. They then applied for planning permission, which was refused, and they appealed to the Minister of Housing and Local Government, the appeal being opposed by the authority. On 10th August, 1957, the Minister allowed the appeal as to such part of the land as was not required for actual housing on the ground that fireclay was a mineral that it was desirable to exploit. Following the decision of the Minister, the applicants again asked the authority for a lease and received a flat refusal. They now applied to the court for an order under s. 1 of the Mines Act, 1923, for the grant of the right to work the minerals comprised in the land and, under s. 3 of the Act, for the grant of all surface wayleaves and other rights over the land of the authority necessary for the purpose of access to and extraction, removal and conveyance of the minerals. At the hearing of the application they sought, under s. 1 of the Act, the right to remove the surface of the land, contending that that was part of the right to work.

WILBERFORCE, J., said that s. 1 of the Act enabled the court, where the necessary conditions were established, to give permission to work minerals, and s. 3 dealt with ancillary rights required to facilitate working. The court had power only to grant or refuse a right applied for and that, under s. 6, was a right covered by the application to the Minister. Therefore, unless it could be said that a particular right had formed the subject-matter of the application to the Minister, the court had no power to entertain it. The court could deal with a right which, although not referred to in words, was necessarily comprehended in the application to the Minister (see *In re West of England Metal Co., Ltd.* [1936] 2 All E.R. 1607) but the court could not amend the application or go outside the application to the Minister. The applicants here were asking the court for a right to destroy the surface of the land by an opencast mining operation and there had never been an application made for such a right. Planning permission did not enable the applicants to say that they had applied in terms for rights to destroy the surface of land belonging to the local authority. It might be a technical point but it was beyond the court's competence to pass it by. Application refused.

APPEARANCES: *G. B. H. Dillon* (*Miller & Smiths*, for *C. L. Hodgkinson & Benton*, Walsall); *John Arnold*, Q.C., and *Charles Sparrow* (*Sharpe, Pritchard & Co.*).

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law]

Queen's Bench Division

DOCK CRANES PROVIDED BY PORT AUTHORITY: WHETHER USE RESTRICTED TO CORPORATION

Garland & Flexman and Another *v.* Wisbech Corporation

Diplock, J. 11th July, 1961

Action.

The plaintiffs, a firm of shipbrokers and ship's agents carrying on business at Wisbech, made use of cranes provided by the Wisbech Corporation at fixed hourly rates for the purpose of loading and unloading ships at the port of Wisbech. When, in 1960, the corporation entered into the stevedoring and ship's agency business on their own account, they decided to refuse the use of the cranes to anyone but themselves in order to acquire all the available stevedoring business, claiming that s. 30 of the Wisbech Corporation Act, 1899, gave them a discretion whether or not to render services and provide gear and machinery such as the cranes. The plaintiffs, relying on s. 22 of the Harbours, Docks and Piers

Clauses Act, 1847, claimed a declaration that, on payment of the appropriate rate, they were at all reasonable times and in common with other members of the public entitled to be granted the use of the cranes.

DIPLOCK, J., said that the corporation were not under any obligation to provide cranes, but if they did provide them, then s. 22 required them to provide proper servants and labourers for working such cranes at all reasonable times for the use of the public and they had no right, so long as the cranes were provided, to restrict their use to the corporation. Section 30 of the Act of 1899 was not inconsistent with s. 22 of the Act of 1847, as it was an enabling section that assumed that the corporation were under no obligation to render services or to provide the cranes. Judgment for the plaintiffs.

APPEARANCES: *H. I. Willis*, Q.C., and *M. Mann* (*Edward & Butler*); *D. Ackner*, Q.C., and *R. I. Threlfall* (*Sharpe, Pritchard & Co.*).

[Reported by Miss H. STEINBERG, Barrister-at-Law]

Probate, Divorce and Admiralty Division

INFANT: INJUNCTION: SCOPE OF COURT'S POWER

***In re An Infant**

Scarman, J. 11th July, 1961

Summons for injunction.

In 1948, a husband obtained a decree absolute of divorce on the ground of his wife's adultery, and was granted custody of the child of the marriage, a boy born in 1946. In 1960, the husband, then a solicitor, was sentenced to a term of imprisonment. The wife then applied for custody of the boy, but no order was made on her summons; she thereafter applied for access to the boy, but withdrew that application. She then wrote a letter, dated 4th July, 1961, addressed to her son, explaining her reasons for withdrawing her application for access. She sent that letter in a sealed envelope, enclosed with a letter to the headmaster of the school in Scotland where the boy was a boarder, and arranged for the father's solicitors to be informed of the course she was taking and to be provided with a copy of her letter to her son. On 7th July, 1961, whilst the letter was still in the hands of the headmaster, Collingwood, J., granted the father *ex parte* an interim injunction for four days, restraining the mother from allowing her letter to be delivered to the boy. The father applied for the interim injunction to be continued.

SCARMAN, J., said that the letter went beyond anything it was reasonable for the mother to say to her son, having regard to his age and antecedents. The question was whether the court had jurisdiction to prevent that letter from being handed to the boy. By the Supreme Court of Judicature (Consolidation) Act, 1925, s. 45 (1), the court was empowered to grant an injunction in all cases in which it appeared to be just or convenient so to do. Those terms were wide, but the court would only invoke the machinery of injunction on grounds recognised by law. This matter arose out of the question of custody of, and access to, a child of the family. The court had power to deny a parent access to his or her child, and to restrain a parent by injunction from writing to a child. Accordingly, it had power to grant the injunction sought. It was clear that the headmaster, in whose hands the letter was, would do what the mother requested him to do. Although the boy, the school and the headmaster were in Scotland, the injunction, if granted, would be effective, since it would fasten upon the conscience of the mother. The injunction would be granted.

APPEARANCES: *S. Seuffert* (*Walter, Burgis & Co.*); *W. R. K. Merrylees* (*J. D. Langton & Passmore*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: WHETHER CONTENTS OF MEMORANDUM OF APPEARANCE EVIDENCE: WHETHER POWER TO ORDER PAYMENT BY INSTALMENTS

Pidduck *v.* Pidduck and Limbrick

Lord Merriman, P. 13th July, 1961

Suit for divorce.

A husband petitioned for divorce on the ground of the wife's adultery with the co-respondent, against whom costs and damages were claimed. An appearance was entered by solicitors on behalf of the co-respondent. In the memorandum of appearance, the question: "Do you intend to defend the case by denying the charges of adultery made against you, and if so, which of them?" was answered: "No."

LORD MERRIMAN, P., said that as the memorandum of appearance had been completed by solicitors acting for the co-respondent, and presumably on his instructions, the answering of that question in the negative was tantamount to an admission of adultery by the co-respondent, and his lordship was prepared so to rule. The case being one for damages, the co-respondent would be ordered to pay to the husband the sum of £120. As the co-respondent was legally aided, his contribution towards the husband's costs would be assessed at £10, and that sum would be ordered to be paid by monthly instalments. The court had no power, however, to order damages to be paid by instalments. That was a matter for arrangement between parties. The court could stipulate the time within which the damages must be paid into court, and in the present case the co-respondent would be given three months from the date of the service of the order upon him. Order accordingly.

APPEARANCES: *D. R. Ellison* (*Haslewoods*, for *Hardman & Watson*, Deal); *J. P. Harris* (*Williamson & Barnes*, Deal).

[Reported by Miss MARGARET BOOTH, Barrister-at-Law]

Court of Criminal Appeal

CRIME: WOUNDING WITH INTENT TO DO GRIEVOUS BODILY HARM: DIRECTION AS TO INTENT

R. *v.* Metharam

Ashworth, Elwes and Thesiger, JJ. 5th July, 1961

Appeal against conviction.

The appellant was convicted at the Central Criminal Court of wounding with intent to do grievous bodily harm. The victim was a prostitute who said in her evidence that he had threatened to kill her, that she had managed to prevent something being tightened round her neck, and to stop with her hand an attempt by the appellant to use a knife with the result that the insertion of seventeen stitches was made necessary. His defence at the trial was one of accident.

ASHWORTH, J., giving the judgment of the court, said that the Commissioner directed the jury in the terms of what might conveniently be called the old-fashioned definition of grievous bodily harm taken from *R.* v. *Ashman* (1858), 1 F. & F. 88, but omitted to direct the jury having regard to the comments made by the House of Lords on that earlier decision in *Director of Public Prosecutions* v. *Smith* [1961] A.C. 290. In the view of the court, as a result of the latter decision, and certainly as applied to the facts of the present case, it was a misdirection to adopt the old formula and invite the jury to find a man accused of wounding with intent to do grievous bodily harm guilty if the only intent established was one to interfere seriously with health or comfort. But as the issue in the present case was whether there was an accident or whether the jury accepted the girl's story, the

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Alton.—EGGAR & CO., incorporating Curtis & Watson, Surveyors, Auctioneers, Land & Estate Agents, Ackender House. Tel. 2401/2. And at Farnham, Surrey, and Basingstoke.

Andover.—F. ELLEN & SON, Land Agents, Auctioneers, Valuers and Surveyors. London Street. Tel. 3444 (2 lines). Established 1845.

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Basingstoke.—EGGAR & CO., incorporating Curtis & Watson, Surveyors, Auctioneers, Land & Estate Agents, 36 Winchester Street. Tel. 2255/6. And at Farnham, Surrey and Alton.

Basingstoke.—SIMMONS & SONS, Surveyors, Valuers, Estate Agents and Auctioneers. Tel. 199.

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Folkestone and District.—BANKS & SON (P. R. Bean, F.R.I.C.S., F.A.I.), Chartered Surveyors, Chartered Auctioneers, etc., 6 Bouverie Square, Folkestone. Tel. 4509/3559.

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Orpington, Petts Wood and West Kent.—MULLOCK (A. F.) & GOWER (A. F. Mullock, J.P., F.A.L.P.A., C. H. Gower, F.A.I.), 161 High Street. Tel. Orp. 25681/2. And Station Square, Petts Wood. Tel. Orp. 23444.

(*Continued on p. xix*)

court took the view that, if the jury concluded the girl's story was right, the intent to do grievous bodily harm was really the only verdict that a reasonable jury could reach and the present case was one in which the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, could and should be applied. In so far as the court held there was a misdirection, it thought that there was no substantial miscarriage of justice, and the appeal was accordingly dismissed. Appeal dismissed.

APPEARANCES: *A. C. L. Lewisohn* (*G. Dawson & Co.*); *R. I. S. Bax* (*Solicitor, Metropolitan Police*).

[Reported by PIERS HERBERT, Esq., Barrister-at-Law]

CRIMINAL LAW: SUMMING-UP: OMISSION OF EVIDENCE

R. *v.* Attfield

Ashworth, Thesiger and Megaw, JJ. 10th July, 1961

Appeal against conviction.

The defendant was charged with indecent assault on, and gross indecency with, two young boys. The case started late on Wednesday afternoon. On Thursday, after the prosecution had completed their case and the defendant had given his evidence, the recorder invited the jury to stop the case, which they refused to do. The court resumed on the following Tuesday, when the defendant called two witnesses as to character. After counsel's speeches, the recorder summed up giving directions as to the law, but not dealing with any evidence except the character evidence given that day. The jury convicted. The defendant appealed on the ground that the summing-up was defective and amounted to a misdirection in that the recorder had omitted to discuss the evidence.

ASHWORTH, J., said that in most cases the judge endeavoured to direct the jury, by reference to the evidence, to the salient features for and against the accused. No case laid down that it was essential for the validity of a summing-up that there should be a reference to the evidence. Conversely, there was no case which absolved the court from what was normally its function of assisting a jury by dealing with the evidence. Nothing that the court said was intended to suggest that a judge was entitled to refrain from discussing the evidence if the circumstances of the case and the conduct of the trial demanded that he should. In a lengthy and complicated case it was incumbent on the court to deal with the evidence, but in a case which had not occupied a great deal of time and in which the issue of guilt or innocence was clearly stated, the court was not prepared to hold that it was a fatal defect that the evidence was not discussed. Although the jury in this case had seen the witnesses five days before they gave their verdict, the witnesses must have created an impression. The jury had heard the addresses of counsel and the recorder's direction on the law, and they were in a position adequately to discharge their duty. The court saw no grounds for allowing the appeal, although it did not approve of the course taken. Appeal dismissed.

APPEARANCES: *H. J. M. Tucker* (*Registrar, Court of Criminal Appeal*); *J. H. Inskip* (*J. R. Haslegrave*, Town Clerk, Portsmouth).

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

THE WEEKLY LAW REPORTS

CASES INCLUDED IN TODAY'S ISSUE OF THE W.L.R.

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Ridge Nominees, Ltd. *v.* Inland Revenue Commissioners (p. 528, *ante*)	3	393
Sykes *v.* Director of Public Prosecutions (p. 566, *ante*)	3	371
Thames Launches, Ltd. *v.* Trinity House Corporation (Deptford Strond)(No. 2) (p. 467, *ante*) ..	3	350

BOOKS RECEIVED

All the Modern Cases on Negligence. By RICHARD BINGHAM, Q.C., Recorder of Oldham. pp. xxxix and (with Index) 571. 1961. London: Sweet & Maxwell, Ltd. £3 10s. net.

An Introduction to the Law of Leases. By A. H. WHITFIELD, M.A. pp. (with Index) 177. 1961. London: The Estates Gazette, Ltd. £1 5s. net.

Censors: The Rede Lecture, 1961. By LORD RADCLIFFE. pp. 31. 1961. London: Cambridge University Press. 3s. 6d. net.

Evidence Explained and Advocacy Self-Taught. A Handbook of Practical Instruction (for Legal Practitioners). By ROBERT BLACKFORD. pp. 65. 1961. London: The Crescent Press, Ltd. 6s. 6d. net.

Journal of the International Commission of Jurists. Volume III. No. 1. Edited by JEAN-FLAVIEN LALIVE. pp. 174. 1961. Geneva: International Commission of Jurists.

Kime's International Law Directory for 1961. Sixty-ninth year. Edited and compiled by PHILIP W. T. KIME, O.B.E. pp. xiv and (with Index) 651. 1961. Watford: Kime's International Law Directory, Ltd. 15s. net.

Common Sense about Crime and Punishment. By C. H. ROLPH. pp. 175. 1961. London: Victor Gollancz, Ltd. 12s. 6d. net.

Moriarty's Police Law. Sixteenth Edition. By W. J. WILLIAMS, O.B.E., B.Sc., LL.B., Chief Constable of the Gwynedd Constabulary. pp. x and (with Index) 639. 1961. London: Butterworth & Co. (Publishers), Ltd. 16s. 6d. net.

Nathan's Equity through the Cases. Fourth Edition. By O. R. MARSHALL, M.A. (Cantab.), Ph.D. (Lond.), of the Inner Temple, Barrister-at-Law. pp. lix and (with Index) 682. 1961. London: Stevens & Sons, Ltd. £3 10s. net.

Natural Resources Journal. Volume I, No. 1. pp. 196. March, 1961. Published twice a year by the University of New Mexico School of Law. $2.50 net.

Private International Law. Sixth Edition. By G. C. CHESHIRE, D.C.L., F.B.A., of Lincoln's Inn, Barrister-at-Law. pp. lv. and (with Index) 733. 1961. London: Clarendon Press: Oxford University Press. £3 10s. net.

Rentcharges in Registered Conveyancing. By THEODORE B. F. RUOFF, Solicitor, Senior Registrar of H.M. Land Registry. pp. xxiv and (with Index) 163. 1961. London: Sweet & Maxwell, Ltd. £1 17s. 6d. net.

Personal Notes

Mr. RICHARD SCARD MORGAN, solicitor, of Liskeard, has resigned as town clerk, after holding the office for fifteen years, to devote himself to private practice.

LORD NATHAN, P.C., T.D., F.B.A., F.S.A., solicitor, who has been a member of the council of the Royal Society of Arts since 1953, has been elected chairman.

NOTES AND NEWS

PRACTICE DIRECTION

WITHDRAWAL OF SOLICITOR WHO HAS CEASED TO ACT FOR A PARTY IN A PENDING APPEAL TO THE COURT OF APPEAL

Where a solicitor who has ceased to act for a party in a pending appeal wishes to apply under Ord. 7, r. 4 (1), of the Rules of the Supreme Court for an order to that effect, the application should be made by motion, supported by affidavit. The papers should be lodged with the " proper officer " as defined in Ord. 58, r. 5 (5). The " proper officer " will be, in relation to appeals of the nature specified in paras. (*a*) to (*e*) inclusive of that rule, the officers respectively indicated in those paragraphs. In reference to all other appeals, including county court appeals, the " proper officer " will be the officer indicated in para. (*f*) of that rule, *videlicet*, the Chief Chancery Registrar. The proper officer, upon being satisfied that the application should be granted, will pass the papers to the president of the court concerned to be initialled, whereupon the order may be drawn up without being bespoken by the solicitor.

This Practice Direction relates only to pending appeals to the Court of Appeal, and not to any proceedings subsequent to the hearing of an appeal by the Court of Appeal.

Specimens of the forms appropriate for use under this Practice Direction are available for reference in the room of the Appeal and Cause Clerks, Room 136, at the Royal Courts of Justice, Strand, London, W.C.2.

By the direction of the Master of the Rolls.

Dated this 5th day of July, 1961.

J. B. H. WYMAN,
Chief Registrar,
Chancery Division.

ENFORCEMENT OF JUDGMENTS (GERMANY)

The Reciprocal Enforcement of Foreign Judgments (Germany) Order, 1961 (S.I. 1961 No. 1199), in operation on 15th July, extends Pt. I of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, to the judgments of the superior courts of the Federal Republic of Germany and West Berlin and makes certain provisions regarding the registration and enforcement of such judgments. Relevant judgments given after 15th July, 1961, will be enforceable in the United Kingdom upon registration in the High Court, the Court of Session or the Supreme Court of Judicature in Northern Ireland.

" WATCHDOG AT WORK "

We regret that in the above-entitled article some comments were wrongly attributed to the Council on Tribunals. The comments following " On 26th April," in the first paragraph of the second column of p. 603 to the end of the paragraph, were in fact contained in a memorandum supplied to the Council by Major Buxton and other objectors.

BAR ELECTIONS

The following barristers have been elected to the Council of the Bar :—*Queen's Counsel :* Messrs. Rawden Temple, Roderic Bowen, M.P., Rudolph Lynos, Alexander D. Karmel, F. D. McIntyre, Michael J. Albery, Roger Ormrod, M. M. Wheeler, W. A. Bagnall ; *Outer Bar :* Messrs. D. G. A. Lowe, A. A. Baden Fuller, J. C. Llewellyn, E. W. Griffith, Francis Barnes, R. Rawden-Smith, Kenneth Jones, Alan de Piro, R. I. S. Bax, S. W. Templeman, M.B.E., J. F. S. Cobb, E. H. Laughton-Scott ; *Under Ten Years' Standing at the Bar :* Messrs. Ronald Waterhouse, J. L. Knox, J. A. C. Spokes.

CHARITIES

The Charities (Baptist, Congregational and Unitarian Churches and Presbyterian Church of England) Regulations, 1961 (S.I. 1961 No. 1282), in operation on 17th July, enable land belonging to a religious charity of which any of the bodies named in the Schedule to the regulations is a trustee to be sold or otherwise disposed of without the necessity for the order of the court or the commissioners otherwise required by s. 29 of the Charities Act, 1960. The land must not have been used in the previous three years otherwise than for the purposes mentioned in para. (*b*) of reg. 1. The Schedule names seventeen Baptist Trust Corporations, thirty-two Congregational Trust Corporations, and in addition the British and Foreign Unitarian Association Incorporated and the Presbyterian Church of England Trust.

LONG VACATION, 1961

Chancery Chambers will be open for Vacation Business from 10 a.m. to 2 p.m. during the periods as under :—

1961	*Master*	*Summons Clerk*
Tuesday, 1st August to Friday, 18th August	MASTER FROST (Room 162)	Mr. THORNELY (Room 164)
Monday, 21st August to Friday, 8th September	MASTER PENGELLY (Room 168)	Mr. EMERY (Room 166)
Monday, 11th September to Friday, 29th September	MASTER NEAVE (Room 176)	Mr. JAMES (Room 174)

All Summons Rooms will be open for Non-Vacation business from 10 a.m. to 2 p.m. with effect from Wednesday, 20th September, 1961.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

The annual report for 1960 of the International Bureau of Fiscal Documentation, Amsterdam, which has just been issued, records considerably increased activity. In 1960 information was supplied in the form of detailed opinions to business firms and their advisers, governmental agencies and international organisations in many parts of the world, and concerned more than a hundred different countries and territories. The bureau is preparing on behalf of the O.E.E.C. a study on the tax treatment of research, which will be published in 1961. In January, 1961, a new fortnightly periodical was started entitled " European Taxation," which is focussed on foreign business and contains articles on taxation in all European countries, with information about tax reforms or proposals for reform. According to the annual report, the bureau regards the tax relations between capital exporting and developing countries as one of the main tax problems of today, and the first chapter of the report deals extensively with this problem. Surveys are given of the tax aspects of international business combines, and of changes in the tax laws of many countries.

Obituary

Mr. FRANCIS OSBORNE BATES, solicitor, of Derby, president of the Derby Law Society in 1952, has died at the age of 65. He was admitted in 1919.

Wills and Bequests

Mr. WILLIAM EDWIN BLAKE CARN, retired solicitor, of Leicester, left £8,492 net.

" THE SOLICITORS' JOURNAL "

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Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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Ramsgate and District.—HOLNESS & OVENDEN, F.A.I., Chartered Auctioneers and Estate Agents, Valuers and Surveyors. Estate House, 73 High Street Ramsgate. Tel. Thanet 52206/7. Established 1838.

Sandwich and East Kent.—G. C. SOLLEY & CO. Offices: 50 King Street, Sandwich. Tel. 3227.

Sevenoaks.—KEMP & THOMAS, F.A.L.P.A., Estate Agents and Valuers. 11a London Road (Tel. 2916).

Tenterden and the Weald of Kent.—HATCH AND WATERMAN, F.A.I. (Est. 1830), Chartered Auctioneers and Estate Agents. Tenterden. Tel. 33.

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Westgate-on-Sea.—BENEFIELD & CORNFORD, Town Hall Buildings. Thanet 31010.

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Blackpool and Fylde Coast.—J. ENTWISTLE & CO., Auctioneers, Valuers and Estate Agents, Station Chambers, 2 Dickson Road, Blackpool. Tel. 20093/4.

Grange-over-Sands.—MICHAEL C. L. HODGSON, Auctioneers and Valuers. Tel. 2253.

Liverpool.—BOULT, SON & MAPLES, 5 Cook Street. Tel. Central 9941 (7 lines). And at West Kirby.

Liverpool.—SMITH & SONS (Est. 1840), Valuers, etc., 6 North John Street, Central 9386. And at Birkenhead.

Liverpool and District.—JOS. RIMMER & SON, 14/20 South Castle Street, Liverpool, 1. Tel. MARitime 1066, and at Birkenhead and Ellesmere Port. Chartered Surveyors, Auctioneers and Estate Agents.

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Manchester.—ALFRED H. GARDNER & SON, F.A.I., Chartered Auctioneers and Estate Agents, 56 Mosley Street. Tel. Central 8985/6. And at Cheadle Hulme.

Manchester.—CLAYTON, SON & CROWTHER, Auctioneers, Valuers and Estate Agents, 76 Mosley Street, Manchester, 2. Tel. Cen. 4943/4.

Manchester.—STUART MURRAY & CO., Auctioneers, etc., 64a Bridge Street. Tel. Blackfriars 5747. And at Altrincham.

Manchester and Oldham.—LESLIE D. CLEGG MORGAN & CO., Chartered Surveyors, Specialists in Town Planning, Rating and Compensation, Prudential Buildings, Union Street, Oldham. Tel. MAIn (Oldham) 6401/3. And at 65 Princess Street, Manchester, 2. Tel. Central 7755.

Preston.—E. J. REED & SONS, F.A.I., Chartered Auctioneers and Estate Agents, 47 Fishergate. Tel. 3249.

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Rochdale and District.—SHEPHERD LUMB & CO., Auctioneers, etc. The Public Hall, Baillie Street. Tel. 3826.

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Market Harborough.—HOLLOWAY, PRICE & CO., Est. 1809. Chartered Surveyors, Chartered Auctioneers. Tel. 2411.

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Grantham and District.—BAILEY & AMBLER, Chartered Auctioneers and Estate Agents, Westminster Bank Chambers, Grantham, Lincs. Tel. 418 (2 lines).

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MIDDLESEX

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Harrow.—CORBETT ALTMAN & CO., F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 40 College Road, Harrow. Tel. Harrow 6222. Also Rating, Compensation and Planning Surveyors.

MIDDLESEX (*continued*)

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Harrow.—P. N. DEWE & CO., See "London Suburbs" Section. Established 1925.

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Sussex and Adjoining Counties.—JARVIS & CO., Haywards Heath. Tel. 700 (3 lines).
West Worthing and Goring-by-Sea.—GLOVER & CARTER, F.A.L.P.A., 110 George V Avenue, West Worthing. Tel. 8686/7. And at 6 Montague Place, Worthing. Tel. 6264/5.
Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.
Worthing.—STREET & MAURICE, formerly EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.
Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.
Worthing.—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.
Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

WARWICKSHIRE

Birmingham and District.—SHAW, GILBERT & CO., F.A.I., "Newton Chambers," 43 Cannon Street, Birmingham, 2. Midland 4784 (4 lines).
Coventry.—GEORGE LOVEITT & SONS (Est. 1843), Auctioneers, Valuers and Estate Agents, 29 Warwick Row. Tel. 3081/2/3/4.

WARWICKSHIRE (*continued*)

Coventry.—CHAS. B. ODELL & CO. (Est. 1901), Auctioneers, Surveyors, Valuers and Estate Agents, 53 Hertford Street. Tel. 22037 (4 lines).
Leamington Spa and District.—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).
Sutton Coldfield.—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

WESTMORLAND

Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.
Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

WILTSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.
Marlborough Area (Wilts, Berks and Hants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2, And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.
Kidderminster, Droitwich, Worcester.—G. HERBERT BANKS, 28 Worcester Street, Kidderminster. Tels. 2911/2 and 4210. The Estate Office, Droitwich. Tels. 2084/5. 3 Shaw Street, Worcester. Tels. 27785/6.
Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

YORKSHIRE

Bradford.—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

YORKSHIRE (*continued*)

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I. Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).
Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street. Tel. 3399/2.
Leeds.—SPENCER, SON & GILPIN, Chartered Surveyors, 132 Albion Street, Leeds, 1. Tel. 30171.
Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.
Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

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Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.
Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.
Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.
Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.
Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

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Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.
Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

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Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

BOROUGH OF EDMONTON

ASSISTANT SOLICITOR

Applications invited for this appointment at N.J.C. Salary Scale " B " (£1,400 × £65 (3) and £75 to £1,670).

Post has section-head status and offers wide experience, including committee work, advocacy, conveyancing, town planning, slum clearance and redevelopment. Five-day week. Preference for candidates with previous municipal experience.

Applications, stating age, qualifications and experience and naming two referees, should reach me not later than Monday, 31st July, 1961.

H. BACKHOUSE,
Town Clerk.

Town Hall,
Edmonton, N.9.

SOUTH EASTERN GAS BOARD

LEGAL ASSISTANT

Young Solicitor, preferably with two years' conveyancing and commercial admitted experience, required as Legal Assistant in the Solicitor's Department at the Board's Chief Office at Croydon. The post is pensionable and initially a salary of not less than £1,250 will be paid. Appointment as Assistant Solicitor to the Board in due course will be a possibility. Applications, giving details of age, education, training and experience, and quoting reference V110/1516, should be sent not later than 21st August, 1961, to the Personnel Manager, South Eastern Gas Board, Katharine Street, Croydon, Surrey.

NEW SCOTLAND YARD

PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Starting salary £1,150 at age 24 to £1,703 at age 35 (or over). Scale maximum £1,937. Non-contributory pension. Good prospects of promotion. No previous experience required of criminal prosecutions. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

TRENT RIVER BOARD

APPOINTMENT OF SENIOR LEGAL ASSISTANT (UNADMITTED)

Applications are invited for the above appointment at a salary range within A.P.T. Grades III–V (£960–£1,480 per annum). Commencing salary according to qualifications and experience. N.J.C Conditions. Five-day week.

Local Government experience is not essential but applicants must be able to carry through conveyancing and allied transactions without supervision and should have experience in general legal work.

Particulars of duties, conditions and method of application obtainable from the Clerk of the Board, 206 Derby Road, Nottingham, by 7th August, 1961.

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(Population 69,400)

ASSISTANT SOLICITOR

Salary within £1,355–£1,525 inclusive. Excellent opportunity for acquiring wide experience in a busy office. Housing available. Five-day week. Full particulars from Clerk and Solicitor, Town Hall, Hayes, Middlesex. Closing date 8th August, 1961.

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APPOINTMENT OF REGISTRAR

Applications are invited for the above post. The Council is constituted under the Professions Supplementary to Medicine Act, 1960. Salary £3,600 per annum with superannuation provisions. Legal qualification will be an advantage. The Council's office will be in London. Applicants should give names and addresses of three referees, and submit five copies of their application to the Chairman of the Council, Sir Sydney Littlewood, at Langwood, Bramley, Guildford, not later than 15th August, 1961.

BOROUGH OF PENZANCE

Applications are invited for the post of LEGAL CLERK in the Town Clerk's Department at a salary within Grade A.P.T. III of the National Salary Scales (£960–£1,140), the commencing salary to be fixed according to the successful applicant's ability and experience.

Applicants should be capable of undertaking conveyancing with nominal supervision. The person appointed will be required to assist in the general legal work of the Department and to take some share in Committee work.

The appointment will be superannuable and the usual Local Government service conditions will apply.

Housing accommodation may be provided and reasonable removal expenses will be paid.

Application forms and further particulars are obtainable from the undersigned by whom applications must be received by first post on Saturday, 12th August, 1961.

E. O. WHEALE,
Town Clerk.

Municipal Buildings,
Penzance.
12th July, 1961.

BOROUGH OF WEDNESBURY

DEPUTY TOWN CLERK

Applications are invited from Solicitors for this Appointment on a salary scale £1,443 £50—£1,643, plus car allowance if appropriate.

Applicants should be competent conveyancers and have experience in advocacy. Experience in public administration would be desirable but is not a condition of appointment.

The Council operates a five-day working week.

Applications giving full particulars of education, professional training and experience with names and addresses of two referees to reach me by 19th August, 1961.

G. F. THOMPSON,
Town Clerk.

Town Clerk's Office,
Town Hall,
Wednesbury.

CITY OF YORK

JUNIOR ASSISTANT SOLICITOR

Applications are invited for this appointment from Solicitors with experience in conveyancing. A knowledge of advocacy desirable. Salary on A.P.T. Grades III—IV (£960–£1,310).

Applications, with the names of two referees, to be forwarded to the Town Clerk, Guildhall, York, on or before 26th July, 1961.

APPOINTMENTS VACANT

LIVERPOOL.—Sole practitioner wants assistant with view to early partnership. Conveyancing, probate and general. Preference to local solicitor with some connections. State age, experience, salary required, etc.—Box 7914, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEGAL Assistant (unadmitted) wanted in busy local government office. Excellent varied experience offered. Salary within the range £815–£960 per annum. Five-day week. Housing provided for married man, if required. —Apply Town Clerk, Darlington, with full particulars by 5th August.

CITY Solicitors require experienced Costs Clerk. Excellent salary for the right person. Pension scheme. Luncheon vouchers. Good holidays.—Box 7920, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Conveyancer wanted. £1,200 p.a. Holiday arrangements honoured.—Box 7916, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORWICH Solicitors with large and expanding practice require Assistant Solicitor on litigation and advocacy side. Salary according to experience and ability. Unadmitted common law clerk would be considered. Please write with full particulars.—Box 7917, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BEDFORDSHIRE.—Assistant Solicitor required by busy general practice, mainly for conveyancing and probate but willing to undertake some advocacy; newly admitted man considered. State age, experience and salary required.—Box 7918, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

INDUSTRIAL Group, Headquarters Birmingham, has vacancy for Solicitor in Secretarial Department. Position would suit recently-qualified solicitor desirous of making a career in industry. Conveyancing experience desirable. State age, experience, qualifications, present salary, and when available to Box 7922, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BEDFORD.—Unadmitted Conveyancing Clerk required by busy general practice—supervision given if necessary. Write with full particulars.—Box 7919, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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Classified Advertisements

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APPOINTMENTS VACANT—*continued*

CITY Solicitors require male or female debt collecting clerk, with previous legal experience. No Sats. Good salary, L.V.'s and pension scheme.—Full details including age and experience, to Box 7915, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ADVOCACY.—London Solicitors to Motoring Organisation require Assistant Solicitor. Salary up to £1,350 according to experience. A newly qualified man with a talent for advocacy would be acceptable.—Box 7921, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

REQUIRED by old-established firm in Hong Kong, Assistant Solicitor, unmarried. Some advocacy including conveyancing, company and court work, probates, etc. Subject to four years' agreement. Excellent prospects. Commencing salary $1,800 per month (equivalent to £112 10s.) with annual increments of $200 for first year and $100 per year thereafter. Full particulars required.—Write Box 321, Reynells, 44 Chancery Lane, W.C.2.

LITIGATION.—Efficient clerk required to take charge of Solicitors busy debt collecting department. Good salary will be paid to the right person. Hol. 2366 or Box 7825, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor (at least three years admitted, and under 35) wanted for litigation department of old-established firm with large agency practice. Approved superannuation fund; excellent prospects. Write stating age, experience and salary required.—Box 323, Reynells, 44 Chancery Lane, W.C.2.

NOTTINGHAM.—Conveyancing Solicitor required for busy and progressive practice. Excellent prospects for capable and energetic person.—Reply stating age and qualifications, Box 7925, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LUTON Solicitors require Solicitor for expanding practice; would suit a finalist; financial assistance for house purchase if required; commencing salary dependent upon experience.—Apply Box 7926, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LARGE Public Property Company requires litigation managing clerk for its legal department. Competent to deal with Possession and Arrears matters with minimum supervision. Salary not less than £1,000 per annum.—Box 7845, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WIGAN.—Old-established Solicitors require Assistant, admitted or unadmitted—good knowledge and experience Conveyancing, Probate and General Practice. Work with or without supervision. Write stating age and experience.—Box 7927, Solicitors' Journal Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY solicitors require probate and trusts managing clerk. Salary commensurate with experience, pension scheme.—Full details including age, experience and salary required, to Box 7911, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY solicitors require experienced conveyancer (admitted or unadmitted). Excellent salary, L.V.'s, pension scheme and prospects.—Apply Box 7912, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SECRETARY/Shorthand-Typist required for very interesting and varied work in Estates Department. Previous experience in a Property or Law office useful. Very pleasant working conditions in new offices.—Please write with details of age and experience to Miss M. Banks, Philips Electrical Industries, Ltd., Century House, Shaftesbury Avenue, W.C.2, quoting ref. 748.

WEST SUSSEX.—Assistant Solicitor required to take charge of Litigation Department. Possibility of partnership later. Salary according to experience but not less than £1,250.—Box 7897, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor (male or female) required by City firm for Probate and Trust Department. Salary commensurate with age and experience. Luncheon vouchers, bonus, good holidays.—Box 7899, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require unadmitted experienced Probate and Trust Clerk. Excellent salary for right person (male or female). Luncheon vouchers, bonus, pension scheme.—Box 7900, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROBATE managing clerk required (male or female) by South-East London Solicitors; own office; minimum supervision or as required; Stenorette system; 3 weeks' vacation; salary according to experience.—Box 7320, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BERKSHIRE, Market Town. Young Clerk with conveyancing, probate and general experience required in small family practice to deal with all types of work and train as Managing Clerk. Good prospects for a man with initiative and adaptability.—Box 7826, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SENIOR CONVEYANCER (admitted or unadmitted) capable of working with little or no supervision and preferably experienced in estate development required by old established firm in South of England. Substantial and progressive salary, excellent working conditions; pension and life assurance schemes, existing holiday arrangements honoured. Assistance with housing and removal expenses if necessary.—Particulars please to Box 7834, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

JUNIOR Assistant required by Portsmouth Solicitors.—Box 7878, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Assistant Solicitor with view to partnership required by expanding West Country firm. Good salary and excellent prospects.—Apply Box 7887, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG solicitor required for busy provincial practice with good opportunity for general experience. Commencing salary £950, or according to length of experience.—Apply Messrs. Austin & Carnley, 7 George Street West, Luton, Beds.

HORNCHURCH solicitors require conveyancing assistant (unadmitted). Must be capable of working without supervision. Salary by arrangement.—Box 7720, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROBATE Clerk for expanding firm in East Midlands county town. £900–£1,000 per annum. Pension scheme.—Box 7880, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BRADFORD Solicitors with expanding general practice require young assistant Solicitor recently admitted with some practical experience. Excellent partnership prospects.—Apply Box 7881, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA.—Assistant Solicitor required for expanding practice mainly conveyancing and probate. Opportunity for energetic young man. Prospects of partnership, salary by arrangement.—Write stating age and experience to Box 7116, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WORTHING Solicitors require Assistant Solicitor, preferably with some experience, mainly conveyancing and probate with occasional opportunities for advocacy; salary £1,250 or according to experience. Write with full details of age, education and experience.—Box 7891, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

SECRETARY/Shorthand-Typist, experienced in legal work, requires temporary work. Any hours, any area.—Write Box 7923, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, many years experience, seeks position for Magisterial Courts or advocacy in Magistrates' Courts solely, or if necessary with probate and trust work or county court work. Districts, London or within 14 miles thereof.—Box 7924, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

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NAMEPLATES in bronze, brass and plastic; quotations and full size layout sent free; signwriting a speciality.—Please send wording to Abbey Craftsmen, Ltd., Abbey Works, 109A Old Street, London, E.C.1. Tel.: CLE 3845.

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£50,000 cash available to buy weekly or other houses, ground rents, etc. No comm. required. Any district.—Buyers' Agents: RAYNERS, 205 Lavender Hill, S.W.11. (BAT 8686).

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A BARGAIN, £25 complete, brand new ready-made Co. Regns. Guaranteed no trading (England or Scotland); all trades available now, including Property Dealing; Mining/Quarrying; Garages; Electrical; Glass/China; Drapers; Packers; Plastics; H.P. Finance; Salvage; Banking, Nominees; Secretarial; Stocks/Shares; Property; Investments; Caravans, etc. (specially prepared for each trade). Write, phone or call (English Registrations) BUSINESS ECONOMY Co., Regns., Ltd. (Dept. 14), 156 Strand, London, W.C.2 (Tem. 8377/2294); (Scottish Registrations to 19 Walker Street, Edinburgh, 3, (Cal. 1167/9). Read "Advantages of trading as a limited Company" (3/– post free). Ltd. Co. may save you personal tax. We also have seven days Co. Regn. service with your own choice of name £21 (plus stamp duty).

DAVIS OF PORT STREET, PICCADILLY, MANCHESTER, 1.—For fine furniture at manufacturers prices. Walk round our three large showrooms, which are open daily until 6 p.m. (Wednesday and Saturday included). We are stockists of all the latest designs of furniture, carpets, mattresses, divans. 10-year guarantee. Also all domestic electrical equipment, etc. Special concession and credit facilities to members of the legal profession. Write to us for whatever you want—we can supply. No other introduction required. Tel.: CEN 0638.

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Classified Advertisements

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PERSONAL—*continued*

SUBSTANTIAL firm of Provincial Solicitors require Mortgages on Purchase of :—

(A) Small Retail Businesses.

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Requirements vary from £3,000 under item (A) to £12,000 under item (B).—Write strictly in confidence with particulars to Box 7876, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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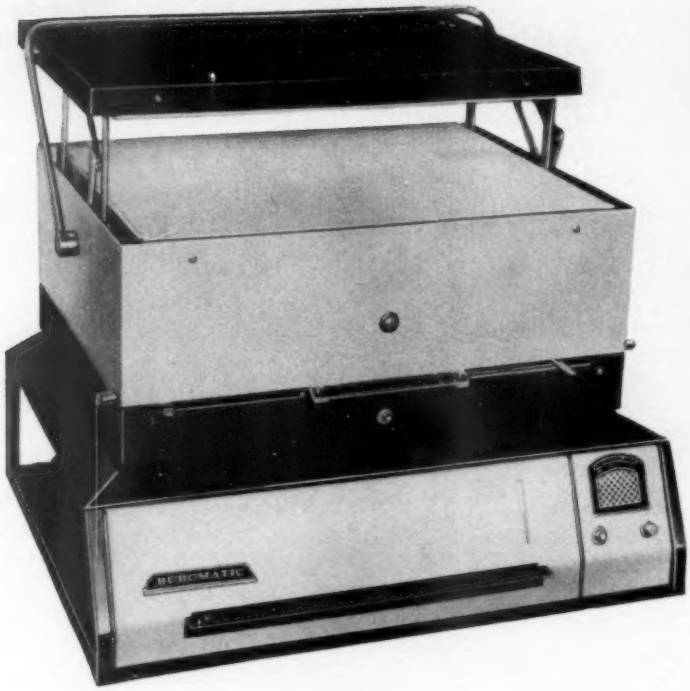

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